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No. 00-217

In the Supreme Court of the United States

SAMUEL L. LIEBER, M.D.
Plaintiff - Petitioner

vs.

CADDO LEVEE DISTRICT
BOARD OF COMMISSIONERS, ET AL.
Defendants - Respondents

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

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pro se

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QUESTIONS PRESENTED FOR REVIEW

1. Does not use of La. C.C. Art. 2030 mandate use of C. C. Art. 2033 only to effect the judgment of C. C. Art.2032?

   Can use of C. C. Art. 2033 be avoided unconstitutionally?

2. Can obviously inapplicable law constitutionally be allowed to apply (La. R.S. 13:5111, 19:14)? This is, - is use of wrong law an ill practice (particularly if it causes irreparable harm to Petitioner)?

3. Can any judge constitutionally rewrite and change the meaning - intent of a statute? - - which change voids the statute's meaning - intent?

4. Can any judge refuse to address (ignore) any statues whether or not presented? See Code of Evidence 202, La. C. C. P. Art. 2005, C.C. Art. 7, 12, 1968, 3477.

5. Can any judge refuse to address presented specific questions of fact or law, the answer to which would reverse any judge's prior answers?

6. Does not a judgment's reversal prevent irreparable harm to one to be affected by such judgment?

   i. e., is not a reversed judgment an ill act?

LIST OF ALL PARTIES TO PROCEEDING AND REQUEST FOR ORDER MANDATING REBUTTAL BRIEFS

The parties to this proceeding are:
Samuel L. Lieber, M.D., Petitioner, *pro se*.
The Louisiana Department of Highways, represented by its counsel, Mr. Ronald J. Bertrand.
Through the nature of the errors alleged by Petitioner regarding the actions of the State Courts in this matter, each State Court District and Appellate Judge is, in effect, a party to this proceeding:

State District Judge Frank H. Thaxton, III, of the First Judicial District Court.

State Appellate Judges Harmon Drew, Jr., Henry N. Brown, Jr., and Charles B. Peatross of the Second Circuit Court of Appeal.

Courtesy copies will be provided to the applicable Justices of the Louisiana Supreme Court.

Petitioner most respectfully requests that the Supreme Court Justices mandate a rebuttal brief from each involved State Judge, - - in order to have their written reasoning regarding these questions which have been presented to you and to them, - - yet remain unanswered! - -an obvious denial of substantive due process.

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CHRONOLOGY

Original Suit for Declaratory Judgment and Damages

Partial Summary Judgment declaring 1953 Right of Way Deed to Louisiana Highway Department void *ab initio*:

Lieber v. Caddo Levee District Board of Commissioners, 27,267 (La. App. 2d Cir. 8/23/95), 660 So.2d 188, writ denied, 95-2355 (La. 12/8/95), 664 So.2d 427.

Claim for Damages denied through Exception of Prescription filed by Louisiana Department of Transportation and Development:

Lieber v. State, Department of Transportation and Development, 28,745 (La. App. 2d Cir. 10/30/96), 682 So.2d 1257, writ denied, 97-0087 (La. 3/7/97), 689 So.2d 1374, reconsideration denied, 97-0087 (La. 4/18/97), 692 So.2d 431.

Suit for Nullity filed by Plaintiff/Petitioner *pro se*:

Lieber v. Caddo Levee District Board of Commissioners, 32,551, 32,552 (La. App. 2d Cir. 12/8/99), 748 So.2d 587, writ denied.

Plaintiff/Petitioner raised the issues of denial of due process (procedural and substantive) and denial of equal protection on page 9 of his Petition. These issues were not addressed by either the State District Court of Court of Appeal.

PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF THE UNITED STATES

Petitioner has been Denied Fundamental Fairness and Basic Justice through the State Courts' deliberate use of Wrong Law and the continued Refusal of these Courts to correct their Error

A Writ of Certiorari should be granted in this case as an extraordinary remedy to correct a serious violation of Plaintiff/Petitioner's rights of substantive due process in what must be construed as the deliberate maladministration of justice in this case through misapplication of law; namely, the State Courts' use of wrong laws and their refusal to correct or even address their errors. The final decision of the State Courts in denying Petitioner's right to pursue his suit for relative nullity must be reversed because the State Courts repetitively refused to address a statute raised as an assignment of error in a prior adjudication of Petitioner's property rights claim, which, if addressed, would have changed the outcome of the case. Clearly, this has violated Petitioner's due process rights, and can only be remedied by this Court's intervention.

Petitioner has shown through his suit for relative nullity that a State Court decision in his previous action for damages for the State of Louisiana's illegal withholding of his valuable real estate from 1953 until 1995 should be voided because, *inter alia*, the Court had refused to address Petitioner's assignment of error in the earlier lawsuit that application of La. C.C. Art. 2032 would have made plaintiff s claim for damages imprescriptable. Instead, by ignoring this law, the State Courts found Petitioner's claim for damages to have prescribed. With the final decision of the

Louisiana Supreme Court denying Petitioner's Application for Writs of Certiorari or Review in Petitioner's subsequent suit for nullity, the State Courts have upheld the granting of an exception of no cause of action filed by Defendant-Respondent, Louisiana Department of Transportation and Development, dismissing Petitioner's action for nullity.

The State Courts compounded their errors by also ignoring a res judicata finding in the previous lawsuit that the State's basis for claiming any right to petitioner's property was void *ab initio.* The courts found that "the State's acquisition of a servitude [in 1953 on plaintiff's property at Youree Drive and Kings Highway in Shreveport] for this limited-access highway project clearly violated former R.S. 48:312 . . ." Accordingly, as required by law, the Courts applied La. C.C. Art. 2030, declaring the servitude agreement to be absolute null. However, despite this res judicata ruling, in a subsequent proceeding for damages the same State Courts ruled that Petitioner's claim for damages against the State had prescribed via erroneous application of statues that cannot apply (La. R.S. 13:5111 and La. R.S. 19:14). This subsequent ruling was a deliberate and direct refusal to apply state law, specifically La. C.C. Art. 2032, which declares that a suit for damages arising from an absolutely null contract does not prescribe - - then refusing to apply La. C.C. Art. 2033, the statute effecting La. C.C. Art. 2030! If C.C. Art. 2030 is applied, then C.C. Art. 2033 must follow to effect 2030! This was not done!

Plaintiff specified this refusal to apply correct law as error to the Louisiana intermediate court of appeal, as follows:

"Given the finality of the judgment that the 1953

> right-of-way is absolutely null, the Trial Court manifestly erred through its ruling on prescription in denying damages to Plaintiff as an effect of this finding under La. C.C. Art. 2033."

However, the intermediate Appellate Court totally ignored, and refused to address, this specification of error, even though application of La. C.C. Art. 2033 was required, and La. C.C. Art. 2032 makes Plaintiff's claim for damages imprescriptable. Writs subsequently were denied by the Louisiana Supreme Court.

Accordingly, Petitioner timely filed his petition for nullity to declare that the prior State Court action in deliberately ignoring a key statute was a vice of substance and ill practice under La. C.C.P. art. 2001 et seq. However, the merits of Petitioner's claim have not been addressed due to the dismissal of Petitioner's suit by the State Courts' granting of the State of Louisiana's exception of no cause of action. This is in violation of the previous res judicata ruling that La. C. C. Art. 2030 applies, which requires that the Courts apply La. C. C. Art. 2033. The deliberate failure to apply correct law is the same as if Petitioner's claim is deliberately being prevented from assertion at all.

---

[1] La. C. C. Art. 2033 provides, in pertinent part:

> "An absolutely null contract, or a relatively null contract that has been declared by the court, is deemed never to have existed. The parties must be restored to the situation that existed before the contract was made. If it is impossible or impracticable to make restoration in kind, it may be made through an award of damages."

Accordingly, Petitioner seeks fundamental fairness and basic justice from this Honorable Court, because:

1 Use of wrong law = an obvious ill practice.

2. Refusal to change use of wrong law = bias and denial of fundamental fairness. (If a judge refuses to defend his use of allegedly wrong law, it shows bias and a denial of a right to a fair hearing.)

3. A court ruling that a suit for nullity cannot apply to legal errors in a prior proceeding ignores the fact that a reversal (= nullity) by an appellate court of a junior court = a finding of the use of wrong law by the court reversed.

These actions by the State Courts are in violation of Petitioner's rights to substantive due process and must be reversed.

1. These decisions are in direct conflict with those of other controlling Louisiana Court decisions.

In Morehead v. Ford Motor Co., 30,207 (La. App. 2d Cir. 2/25/98), 709 So. 2d 861, the Louisiana Second Circuit Court of Appeals held that an "ill practice" is "any improper practice or procedure which operates, even innocently, to deprive a litigant of some legal right." (Emphasis added.) However, through its ruling in this case, the Second Circuit Court of Appeals has excluded from this broad definition the actions of a prior court in refusing to consider law raised through assignment of error which is critical to the resolution of the case.

2. The Louisiana Supreme Court has left unresolved a significant issue of law that must be resolved.

The Louisiana Second Circuit Court of Appeals ruled in this case, "A court's consideration of the law, even if done erroneously, can in no way be construed as an 'ill practice.'" There is no legal foundation given for this sweeping statement, which should be resolved by this Court. Petitioner asks: Is not any judgment an "ill practice" on the part of the court reversed?

3. The State Court decisions erroneously interpret Louisiana law so as to cause material injustice and significantly affect the public interest.

The Second Circuit Court of Appeals misinterpreted and misapplied not only La. C.C.P. art. 2001 and 2004 as to what constitutes a vice of substance and an ill practice, but also La. C.C.P. 2005 through a grievously **wrong** statement of the statute itself! (It is unconstitutional for a judge to change the wording - intent of legislation!)

C.C.P.2005 provides that a judgment which has been rendered by an appellate court may be annulled when the ground for nullity (a.) did not appear in the record of appeal, or (b.) was not considered by the appellate court. The Second Circuit erroneously misstated the statute by saying that C.C.P. 2005 "simply precludes annulment of a judgment when the ground for nullity appeared in the record of appeal **or was considered by the trial court**." This simply is wrong. Instead, Petitioner has shown that his stated ground

for nullity, the failure of the prior Appellate Court to apply C.C. 2033, comes squarely within the second basis of 2005 because 2033 was not considered by the Appellate Court, both in the original appeal as well as by denial of rehearing.

Further, La. C.C. Art. 3477, permitted in Petitioner's Suit for Nullity via Code of Evidence Art. 202 though never appearing in the record of this case, nulls the servitude granted by the previous ruling of the Second Circuit Court of Appeal. Finally, Code of Evidence 202, and La. C.C. Arts. 7, 11, 12, and 1968 force the same conclusions, yet never were formally introduced by Plaintiff, Defendant, or the Courts, until Plaintiff's suit for nullity (permitted by La. C.C.P. Art. 2005 and Code of Evidence Art. 202).

4. The State Courts' decisions grossly depart from proper judicial proceedings

By its ruling, the Second Circuit Court of Appeals ignored controlling law not once, but twice, thereby resulting in gross injustice to plaintiff. Petitioner's rights to substantive due process have been violated, which must take precedence over any unstated interest in the "finality" of an erroneous judicial decision.

STATEMENT OF THE CASE

Facts

In 1953, the Louisiana Department of Highways acquired numerous parcels of land for the construction of Youree Drive Extension (La. Hwy. 1) in Shreveport, Louisiana. The Department of Highways was predecessor to the Louisiana Department of Transportation and

Development (DOTD), Defendant. DOTD admitted, and the Trial Court and Court of Appeal concurred, that Youree Drive Extension is a limited access highway, a special "class" of road.

Philip Lieber, father and predecessor in title to Plaintiff, Samuel L. Lieber, M. D., owned a 2.09-acre parcel of land at the intersection of Kings Highway and the planned Youree Drive Extension. The Department of Highways acquired only a right of way over the subject Lieber property, refusing to purchase fee title.

DOTD acquired the subject property through an invalid 1953 right of way deed by the Defendant, the Louisiana Department of Transportation and Development (DOTD), successor to the Louisiana Department of Highways, of a valuable 2.09-acre tract of land belonging to Plaintiff, Samuel L. Lieber, M.D., located at the intersection of Youree Drive Extension (La. Hwy. 1) and Kings Highway in Shreveport, Louisiana. The entire 2.09-acre tract was taken and held for what Defendant consistently claimed were highway purposes, although only a portion was paved for La. Hwy. 1. Plaintiffs property is valuable because it is located at one of the most heavily traveled commercial intersections in Shreveport. Plaintiff originally filed suit in 1982 (to prevent 30-year acquisitive prescription), amended in 1985 to challenge the validity of DOTD's acquisition of the right of way. The Trial Court eventually in 1994 rendered partial summary judgment holding that the act obtaining the subject property was absolutely null ab initio. (Opinion of Trial Court on Partial Summary Judgment rendered March 30, 1994.) The Second Circuit Court of Appeal affirmed in the following terms:

"The trial court declared the right-of-way deed null and void on the basis of LSA-C.C. Art. 2030, which declares a contract absolutely null when it violates a rule of public order and provides that such a contract cannot be confirmed. . . Courts have interpreted the prohibition against contracts 'contrary to public order' as including a violation of a state statute. *Wynne v. New Orleans Clerks and Checkers Union, Local 1497, International Longshoremen's Association, AFL-CIO*, 550 So. 2d 1352 (La. App. 4th Cir. 1989), writ denied, 558 So.2d 1125 (La. 1990). **Furthermore, according to LSA-C.C. Art. 2032, an action for annulment of an absolutely null contract does not prescribe.**

Therefore, we find no error on the part of the trial court in declaring the contract null and void. See *Johnson v. Kilpatrick*, 569 So.2d 669 (La. App. 2d Cir. 1990)." (Emphasis added.)

Trial on the merits of the case was held in October, 1995, while DOTD's writ application challenging the Court of Appeal ruling that its acquisition was absolutely null was still pending. The Louisiana Supreme Court finalized the absolute nullity in December, 1995! The Trial Court held in November, 1995, and the Second Circuit Court of Appeal subsequently affirmed in October, 1996, that the Plaintiff's action in damages had prescribed. Note that a writ was denied by the Louisiana Supreme Court on this issue **after** its prior judgment of December, 1995 of absolute nullity of a servitude via La. C.C. Art. 2030, to be effected by La. C.C. Art. 2033, thus making the later judgment of prescription null! The District Court relied upon La.R.S. 13:5111, changed by the Appeal Court to R.S. 19:14, both inapplica-

ble! Writs subsequently were denied by the Louisiana Supreme Court. Further, the Louisiana Supreme Court erroneously denied writs appealing the error of use of R.S. 19:14 rather than C.C. Art. 2033, due to the res judicata effect of the adjudication of December, 1995, that C.C. Art. 2030 held - - which mandates its effect via C.C. Art. 2033!

Plaintiff subsequently and timely filed a petition for nullity, alleging that the failure of the Appellate Court to even address the application of La. C.C. Art. 2033 was a vice of substance which justice requires be annulled. (C.C.P. 2005, etc.)

In Plaintiff's Original Brief filed with the Second Circuit Court of Appeal on March 18, 1996, it was specified as error and argued at pp. 18-19:

> **" 2. The Trial court manifestly erred, through its ruling on prescription, in denying damages to Plaintiff as an effect of the finding that the 1953 Right-of-Way Agreement was absolutely null.**
>
> Given the finality of the judgment that the 1953 right-of-way is absolutely null, the Trial Court manifestly erred through its ruling on prescription in denying damages to Plaintiff as an effect of this finding, under La. C. C. Art. 2033.
>
> La. C. C. Art. 2033 provides, in pertinent part:
>
> 'An absolutely null contract, or a relatively null contract that has been declared null by the court, is deemed never to have existed. The parties must be restored to the situation that existed before the con-

> tract was made. **If it is impossible or impracticable to make restoration in kind, it may be made through an award of damages.**' (Emphasis added.)"

However, the Second Circuit Court of Appeal, in its Opinion and Judgment rendered on October 30, 1996, did not address this specification of error under Civil Code Article 2033. Plaintiff shows that his property has not been restored and that to do so would be impracticable, at best. Louisiana Highway 1 rests on top of a significant portion of Plaintiffs property. While not impossible to have the highway relocated, and the mound of dirt for the abandoned levee restored, it certainly would be enormously expensive for the State to achieve what the law requires because of the illegal actions of the Highway Department in its method of acquiring control over the Lieber property.

What the law calls for, instead, in this situation is damages. Such an action **does not prescribe**. Civil Code Article 2032.

Civil Code Article 2033, by its very wording, must control over the St. Julien doctrine. (St. Julien cannot apply!) Art. 2033 provides that upon a finding of nullity, "the contract is deemed never to have existed." All of DOTD's claims to the Lieber property under color of law were made under the 1953 right of way agreement - consistently maintained by DOTD until the Louisiana Supreme Court denied writs in December, 1995. With the right of way contract being declared to be null *ab initio*, all rights claimed by the State fell with it.

Errors by State Courts

I. AS A MATTER OF LAW THE COURT OF APPEAL ERRED IN REFUSING TO FIND THAT GROUNDS FOR NULLITY ARE TO BE INTERPRETED BROADLY, INCLUDING IMPROPER ACTION ON THE PART OF THE PRIOR COURTS IN REFUSING TO CONSIDER AND ADDRESS PERTINENT LAW SPECIFIED IN ASSIGNMENT OF ERROR

II. AS A MATTER OF LAW THE OPINION AND JUDGMENT OF THE SECOND CIRCUIT COURT OF APPEAL DELIBERATELY MISSTATES LA. C.C.P. ART. 2005 AS TO WHEN AN APPELLATE COURT DECISION MAY BE ANNULLED; IT CHANGES THE MEANING AND IS UNCONSTITUTIONAL!

III. AS A MATTER OF LAW THE PRIOR APPELLATE COURT'S DECISION SHOULD BE ANNULLED FOR IMPOSING A ST. JULIEN SERVITUDE ON PLAINTIFF'S PROPERTY ON APPEAL WHEN NONE HAD BEEN REQUESTED OR RULED UPON BY THE TRIAL COURT; AND SUCH SERVITUDE CANNOT LEGALLY APPLY! ST. JULIEN CAN APPLY IF NO PAYMENT FOR THE SERVITUDE HAS BEEN MADE - - PAYMENT HAD BEEN MADE!

IV. AS A MATTER OF LAW, THE COURT OF APPEAL ERRED IN FINDING THAT IT WAS NOT JUDICIAL ILL PRACTICE FOR THE PRIOR COURTS TO TAKE JUDICIAL NOTICE OF DOTD'S STATUS AS A PRECARIOUS POSSESSOR UNDER LA. C.C. ART. 3477 WHICH, IF ACKNOWLEDGED, WOULD HAVE DEFEATED DEFENDANT'S AWARD OF A ST.

JULIEN SERVITUDE (OR ANY SERVITUDE)!

I AS A MATTER OF LAW THE COURT OF APPEAL ERRED IN REFUSING TO FIND THAT GROUNDS FOR NULLITY ARE TO BE INTERPRETED BROADLY, INCLUDING IMPROPER ACTION ON THE PART OF THE PRIOR COURTS IN REFUSING TO CONSIDER AND ADDRESS PERTINENT LAW SPECIFIED IN ASSIGNMENT OF ERROR

The Second Circuit Court of Appeal ruled, "A judgment cannot be annulled merely for being legally wrong. The correctness of the judgment must be questioned on appeal." (Not true, as noted in La. C.C.P. Arts. 2001, 2004, and 2005!) However, putting aside this statement as a possible acknowledgment on the part of the present panel of the Appellate Court that the prior panel was wrong in failing to apply La. C.C. Art. 2033, the conclusion is wrong as a matter of law in overlooking a significant change in statute and in misinterpreting the judicial precedents cited.

The Statute governing an action for nullity, La. C.C.P. Art. 2004, was changed in 1960 to broaden the definition of an "ill practice" giving rise to the action. Formerly, Code of Practice Art. 607 required the "Ill practice" to be on the part of the party in whose favor the judgment at issue was rendered. However, this limitation is not contained in the Art. 2004.

Instead, C.C.P. art. 2004 is broad enough to require a judgment to be annulled when there is any ill practice on the part of **anyone** involved in granting of the judgment, including the court. The broadening the definition of "ill

practice" through adoption of C.C.P. art. 2004 "was deliberate." St. Mary v. St. Mary, 175 So.2d 893 (La. App. 3rd Cir. 1965).

Even under the interpretation of the previous statute, an ill practice requiring a prior judgment to be annulled can be misapplication of law by the court. Vegas v. Cheramie, 80 So.2d 880 (La. App. 1st Cir. 1955), writ denied. This conclusion is consistent with the ruling of the Second Circuit Court of Appeal itself, that an "ill practice" is "any improper practice or procedure which operates, even innocently, to deprive a litigant of some legal right." Morehead v. Ford Motor Co., 30,207 (La. App. 2d Cir. 2/25/98), 709 So. 2d 861. This statement by the Second Circuit is itself consistent with the ruling of this Supreme Court in Johnson v. Jones-Journet, 320 So.2d 533 (La. 1975), that:

> " . . . the jurisprudence set forth two criteria to determine whether a judgment had, in fact, been obtained by actionable fraud or ill practices: (1) the circumstances under which the judgment was rendered showed the deprivation of legal rights of the litigant seeking relief, and (2) the enforcement of the judgment would have been unconscionable and inequitable."

320 So. 2d 533 at 537.

The legal right of which plaintiff has been deprived in this case is substantive due process, guaranteed under both the federal and state constitutions. This right of due process has been denied by the refusal and failure of the courts, specifically the prior panel of the Second Circuit Court of Appeal as complained of by plaintiff, to have a

assignment of error addressed and correct statutes applied. This right of due process must override any unstated interest in "finality" of a judgment without legal foundation. The reason is that refusal to consider proper law cannot be "a thing adjudicated" when it was not adjudicated.

II AS A MATTER OF LAW THE OPINION AND JUDGMENT OF THE SECOND CIRCUIT COURT OF APPEAL MISSTATES LA. C.C.P. ART. 2005 AS TO WHEN AN APPELLATE COURT DECISION MAY BE ANNULLED.

By restating La. C.C.P. art. 2005 on page 6 of its opinion, the Appellate Court changed its meaning to something not intended by the People through their Legislature! The article reads, in pertinent part:

> "A judgment ... rendered by an appellate court may be annulled only when the ground for nullity did not appear in the record of appeal or was not considered by the appellate court."

The Second Circuit Court of Appeal, however, at page 6 of its opinion, attempts to reverse the meaning by saying:

> ". . . [La. C.C.P. art. 2005] precludes annulment of a judgment when the ground for nullity appeared in the record of appeal or was considered by the trial court."

This restatement is erroneous in two ways. First is the apparent typo in saying "trial court" when the article deals with decisions by an appellate court. Second, the

restatement is misleading in that it implies something the article does not by its plain meaning. The article states that a judgment rendered by an appellate court may be annulled when the ground for nullity either(1.) did not appear in the record of appeal, or (2.) if the ground for nullity did appear in the record, it was not considered by the appellate court.

It is plaintiffs position that under a correct statement of C.C.P. Art. 2005, he has shown that his arguments meet both tests. As to the failure of the prior appellate court to apply C.C. Art. 2033, while the "ground for nullity" appeared in the record of prior appeal through plaintiff's specification of error, it clearly was not considered or addressed by the appellate court because it was not mentioned by the appellate Court at all, - - but ignored!

III AS A MATTER OF LAW THE PRIOR APPELLATE COURT'S DECISION SHOULD BE ANNULLED FOR IMPOSING A ST. JULIEN SERVITUDE ON PLAINTIFF'S PROPERTY ON APPEAL WHEN NONE HAD BEEN REQUESTED OR RULED UPON BY THE TRIAL COURT, NOTING THAT THE APPELLATE COURT REFUSED REHEARING; THUS DENYING PLAINTIFF SUBSTANTIVE DUE PROCESS, - - A CHANCE TO ARGUE THE POINT!

Plaintiff suffered a violation of substantive due process by the imposition of the prior appellate court of a St. Julien servitude over the roadway portion of La. Highway 1 crossing his property when no such servitude had been requested or ruled upon by the trial court, and is illegal -- because payment for the servitude had been made to property owner by the highway department, and the St Julien

doctrine applied only when Payment has not been made!

Appellate decisions should be, by their nature, limited to the facts and law contained in the pleadings before the court. In the prior appeal that is the subject of plaintiff's action for nullity, the trial court had ruled that while the right of way deed granted by plaintiff's father to the Louisiana Department of Highways was void, plaintiff's claim for damages had prescribed due to the illegal use of R.S. 13:5111!. This was the issue briefed and argued to the appellate court.

However, when the Second Circuit Court of Appeal issued its opinion upholding the trial court, the appellate court had added on its own a ruling that the Louisiana Department of Transportation and Development was entitled to a St. Julien servitude over the roadway portion of Louisiana Highway 1 crossing plaintiff's property. This cannot hold legally!

The imposition was contrary to law because plaintiff-appellant's father was paid for the servitude. Therefore, by its terms, the St. Julien doctrine, which applies only if no payment is made, cannot apply! See R.S. 19:14, 13:5111.

Moreover, the St. Julien doctrine "requires a consent or acquiescence by the landowner to the taking of the property without expropriation proceedings." Howard v. Louisiana Power & Light Company, 583 So. 2d 503 at 508, 509-510 (La. App. 5th Cir. 1991). Further, both R. S. 13:5111 and the St. Julien doctrine require good faith taking. Howard v. Louisiana Power & Light Company, supra; Jungeblut v. Parish of Jefferson, 485 So. 2d 974 at 977 (La. App. 5th Cir. 1986). Plaintiff had shown that the record

evidence of the prior action requires only one reasonable conclusion of the State's actions in this case: bad faith, demanding and paying less for a servitude when the Highway Department had recently successfully sued for mandating payment for fee title - - in the same highway system (property owned by the Bessie Barrow family)!

There could be no basis for consent or acquiescence, given the misrepresentations by the Department of Highways as to the legality of the original right of way deed and the continued misrepresentations of the Department of Highways and later, DOTD, concerning the necessity of retaining the subject Lieber pararoadbed property (that is, property adjoining the roadbed) for highway purposes. There could be no "concurrence of wills," necessary for consent, and no reasonable basis to acquire knowledge of the voidability of the right of way deed despite the State's knowledge of the illegality and bad faith failure to disclose. Under these facts, there could be no acquiescence to the State's actions.

Consider what plaintiff did not know Plaintiff did not know that the Highway Department/DOTD, despite its consistent misrepresentations that the entire property was needed for highway purposes, determined that it had lost any rights to the unpaved portion of the Lieber property through the running of liberative prescription. Plaintiff did not know of the Highway Department's consistent practice of expropriating properties for Youree Drive Extension in fee only, <u>although the Highway Department/DOTD did.</u> Plaintiff <u>did</u> know that the Highway Department allowed third party commercial use of the pararoadbed property, and objected to this excess taking, which the Highway Department ignored.

Plaintiff did not know that the St. Julien servitude issue was even to be considered by the Appellate Court, and had no opportunity to address the issue in oral or written argument.

This Honorable Court must consider the requirements of good faith and the consequences of fraud:

Civil Code Art. 1759: "Good faith shall govern the conduct of the obligor and the obligee in whatever pertains to the obligation."

Civil Code Art. 1983: ". . . Contracts must be performed in good faith."

Civil Code Art. 1953: "Fraud is the misrepresentation or a Suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction."

Civil Code Art. 1954: "Fraud does not vitiate consent when the party against whom the fraud was directed could have ascertained the truth without difficulty, inconvenience, or special skill. This exception does not apply when a relation of confidence has reasonably induced a party to rely on the other's assertions or representations." (And why should not a citizen trust the business activities of government personnel?)

For plaintiff to lose his valuable rights to compensation for the bad faith actions of the Highway Department/DOTD under the factual circumstances constitutes a denial of due process under Article 1, Sections 2 and

4, of the Louisiana Constitution.

Even with good faith on the part of the State employees, the judgment with its basis on C.C. Art. 2030 - - mandates the use of C.C. Art. 2033 to effect C.C. Art. 2030!

IV AS A MATTER OF LAW, THE COURT OF APPEAL ERRED IN FINDING THAT IT WAS NOT JUDICIAL ILL PRACTICE FOR THE PRIOR COURTS TO TAKE JUDICIAL NOTICE OF DOTD'S STATUS AS A PRECARIOUS POSSESSOR UNDER LA. C.C. ART. 3477 WHICH, IF ACKNOWLEDGED, WOULD HAVE DEFEATED DEFENDANT'S AWARD OF A ST. JULIEN SERVITUDE

The prior courts in this proceeding could and should have taken judicial notice under Art. 202 of the Code of Evidence that defendant held the status of a precarious possessor of plaintiff's property, given that defendant's occupation of the property was under a right of way deed that was not declared invalid until 1995. As a precarious possessor, defendant would be unable to acquire any rights by acquisitive prescription.

Since defendant, as a precarious possessor, was unable to acquire rights by acquisitive prescription, the Second Circuit Court of Appeal wrongfully awarded defendant a St. Julien servitude over the roadbed of Youree Drive. (The award of the St. Julien servitude was made, for the first time, in the opinion of the Second Circuit Court of Appeal in the appeal of plaintiff's case on damages and was not part of the Trial Court's decision on damages.) Again, given the timing of the award of the St. Julien servitude, plaintiff was

unable to even address the award except through an application for rehearing (denied) and application for writs to the Louisiana Supreme Court (denied) - no oral argument was ever allowed by this Honorable Court on its decision to award a St. Julien servitude.

Given that defendant was a precarious possessor, unable to benefit from any rights of acquisitive prescription, then the use of La. C. C. Art. 2030 -- and C. C. Art. 2033 - was mandated. The Court of Appeal erred in failing to find that it was judicial ill practice for the prior appellate court to fail to apply the law of precarious possession, via C.C. Art. 3477!

CONCLUSION

Judges deny substantive due process when they refuse to permit further oral and written reasoning of previously presented facts through denying rehearings, thus refusing to consider certain valid arguments that nullify judgments!

Petitioner respectfully asks this Honorable Court to grant this petition for certiorari and grant petitioner the justice and fundamental fairness that petitioner has been so grievously denied through the actions of prior state courts, actions which must be nullified through the proper application of law, the solemn expression of legislative will.

These acts at each level of the State Courts are illegal and unconstitutional alterations of both State and Federal Statutes! There has been continuing use of procedural due process to DENY substantive due process! - - How often is it done? - - WHY?

Respectfully submitted,

Samuel L. Lieber, M.D.
pro se

(2) Supreme Court, U.S.
FILED
00-217 JUL - 6 2000
OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

SAMUEL L. LIEBER, M.D.
Plaintiff - Petitioner

vs.

CADDO LEVEE DISTRICT
BOARD OF COMMISSIONERS, ET AL.
Defendants - Respondents

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF LOUISIANA

APPENDIX VOLUME I

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87pp

APPENDIX

Pertinent Pleadings

1 Suit for Nullity: Original Petition filed August 29, 1997, by Plaintiff/Petitioner in First Judicial District Court, Caddo Parish, Louisiana.....A-1

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5. Suit for Nullity: Denial by Louisiana Supreme Court on April 7, 2000, of writ application filed by Plaintiff/Petitioner.....A-102

6. Original Suit for Declaratory Judgment and Damages: Opinion dated March 30, 1994, by Trial Court granting Plaintiff/Petitioner's Motion for Partial Summary declaring the 1953Right of Way Deed to Louisiana Highway Department void ab initio.....A-103

7. Original Suit for Declaratory Judgment and Damages: Opinion rendered August 23, 1995, by Louisiana Second Circuit Court of Appeal (intermediate appellate court), affirming decision of Trial Court on Plaintiff/Petitioner's Motion for Partial Summary Judgment.....A-109

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9. Original Suit for Declaratory Judgment and Damages: Opinion dated November 22, 1995, by Trial Court denying Plaintiff/Petitioner's claim for damages through granting of Exception of Prescription filed by Louisiana Department of Transportation and Development.....A-123

10. Original Suit for Declaratory Judgment and Damages: Except from Original Brief filed on behalf of Plaintiff/Petitioner with Louisiana Second Circuit Court of Appeal specifying as error failure of Trial Court to address effect of La. C.C. Art. 2033.....A-131

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12. Original Suit for Declaratory Judgment and Damages: Writ Denial by Louisiana Supreme Court dated March 7, 1997, making final the judgment denying Plaintiff/Petitioner's claim for damages.....A-165

13. Original Suit for Declaratory Judgment and Damages: Denial dated April 18, 1997, by Louisiana Supreme Court of Plaintiff/ Petitioner's application for reconsideration.....A-166

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15. La. Civil Code Art. 7, 11, 12, 1759, 1953, 1954, 1968, 1983, 3477.....A-169

16. La. R.S. 13:5111.....A-173

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19. La. Code of Civil Procedure Art. 2001, 2004, 2005.....A-178

APPENDIX 1

ASSIGNMENT: SECTION

SAMUEL L. LIEBER, M.D.	: DOCKET NUMBER
	: 420,225
VERSUS	:
	: FIRST JUDICIAL
	: DISTRICT COURT
STATE OF LOUISIANA,	:
DEPARTMENT OF	:
TRANSPORTATION AND	:
DEVELOPMENT	:CADDO PARISH,
	: LOUISIANA

AMENDED PETITION FOR PERMANENT INJUNCTION FOR RETURN OF PROPERTY, OR, ALTERNATIVELY, FOR DAMAGES WITH ADDED PETITION FOR NULLITY OF LOUISIANA STATE SUPPREME COURT DECISION NO. 97-C-0087, SAMUEL L. LIEBER, M.D. VERSUS CADDO LEVEE BOARD OF COMMISSIONERS, ET AL

BRIEF REGARDING PETITION FOR NULLITY

Plaintiff seeks consideration relating to, Judges' refusal to acknowledge C.E. Art. 202, Judicial notice of legal matters.

A. Mandatory. A court whether requested to do so or not shall take judicial notice of the laws of the United States, of every state, territory, and other jurisdiction of the United States, --.

So far, apparently, all Judges in this case have neither acknowledged nor applied all pertinent statutes, most of which exist in the Briefs in this Casel Nevertheless, the above Statute, C.E. Art 202 mandates use of all applicable statutes, most of which are noted below, in Table of Contents.

Also, Plaintiff notes that each statute might apply to Plaintiff, Defendant, and/or Judge!

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Section No. 0

SYNOPSIS

NO MAN IS ABOVE THE LAW!

I. -- J* The Louisiana State Supreme Court finalized adjudication of this Cause (Lieber vs. Caddo Levee Board of Commissioners, Et Al, No. 97-C-0087) by applying the Act of the Louisiana Legislature, Civil Code Act No. 2030 (Louisiana Acts 1984 No. 331, Sec. 1)

II.-- J* The Statute of the Louisiana Legislature, Civil Code Art. 2033 (Louisiana Acts 1984 No. 331, Sec. 1) mandates precisely how the Judiciary shall effect the meaning of Civil Code Art. 2030 (by plain meaning, syntax, and Legislative intent)

J* A. C. C. Art. 13 -- Plain meaning of text - When a law is clear and free from all ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit.

J* B. C. C. Art. 14 -- Ordinary words - The words of a law are generally to be understood in their most usual signification, without attending so much to the niceties of gram mar rules as to the general and popular use of the words.

*

P-applies to Plaintiff
D-applies to Defendant
J-applies to Judge

J* C. C. C. Art. 15 Words of art and technical terms - Terms of art or technical terms and phrases, are to be interpreted according to their received meaning and acceptation with the learned in the art, trade or profession to which they refer.

J* D. C. C. Art. 16 -- Ambiguous words or phrases Where the words of a law are dubious, their meaning may be sought by examining the context with which the ambiguous words, phrases and sentences may be compared, in order to ascertain their true meaning.

J E. C. C. Art. 18 - Reason and spirit of laws - The universal and most effectual way of discovering the true meaning of a law, when its expressions are dubious, is by considering the reason and spirit of it, or the cause which induced the Legislature to enact it.

J F. C. C. Art. 19 - Laws declaring certain acts void - When to prevent fraud, or from any other motives of public good, the law declares certain acts void, its provisions are not to be dispensed with on the ground that the particular act in question has been proved not to be fraudulent, or not to be contrary to the public good.

J G. C. C. Art. 20 -- Odious and favored laws - The distinction of laws into odious laws and laws entitled to favor, with a view of narrowing or extending their construction,

can not be made by those whose duty it is to interpret them.

J H. C. C. Art. 21 -- Absence of express law, court's duty to decide equitably - In all civil matters, where there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason, or received usages, where positive law is silent.

III.-- Code of Judicial Conduct, Canon 2-A

2. Code of Judicial Conduct, Canon 2-A (R.S. 13, Vol. 8)

J Canon 2 -- A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities.

A. A judge should respect and comply with law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

IV. Code of Judicial Conduct, Canon 3-A-1

3. Code of Judicial Conduct, Canon 3-A-1 (R.S. 13, Vol. 8)

J Canon 3 -- A Judge Should Perform the Duties of His Office Impartially and Diligently.

A. Adjudicative Responsibilities

(1) A judge should be faithful to the law

and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

Appendix to Canon 3
"Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

V.-- C. E. Art. 202

1. C.E. Art. 202. Judicial Notice of legal matters

J A. Mandatory. A court whether request ed to do so or not shall take judicial notice of the laws of the United States, of every state, territory, and other jurisdiction of the United States, --

VI.-- C. C. Art. 5 - Ignorance of Law

P,D,J No one may avail himself of ignorance of the law (6a. C. C. Art. 5, Comment (b) -

P,D,J Ignorance is unexcusable for laws that are in force.

VII. -- C. C. Art. 19 -- Laws declaring certain acts void -
J When to prevent fraud, or from any other motives

of public good, the law declares certain acts void, its provisions are not to be dispensed with on the ground that the particular act in question has been proved not to be fraudulent, or not to be contrary to the public good.

VIII. -- C. C. Art. 20 -- Odious and favored laws - The
J distinction of laws into odious laws and laws entitled to favor, with a view of narrowing or extending their construction, can not be made by those who duty it is to interpret them.

IX. -- C. C. Art. 21 -- Absence of express law, court's duty

J to decide equitably - In all civil matters, where there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason, or received usages, where positive law is silent.

X.-- C.C. Art. #1968 -- Unlawful cause
J The cause of an obligation is unlawful when the enforcement of the obligation would produce a result prohibited by law or against public policy. Acts 1984, No. 331, Sec 1.

Note that the construction of the highway roadbed, etc, produced a result prohibited by law and against public policy, and the continuing existence of this physical entity is prohibited by law and against public Policy! It is noted that the Louisiana State Supreme Court decision of] December, 1995 voided the servitude contract, and, as noted in Art. 12 (Whatever is

done in contravention of a prohibitory law, is void, although the nullity be not formally directed) -- therefore the continued existence of said roadbed, as well as its use, is void (v-s-)!

XI. -- C.C. Art. #1953 -- Fraud may result from misrepresentation or from silence

P, D, J Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction. Acts 1984, No. 331, Sec 1.

XII. C.C. Art. 7 Derogation of Public Interest Laws is an absolute nullity (Source: C.C. Arts. 11, 12 (1870)

J Persons may not by their juridical acts derogate from laws enacted for the protection of the publicinterest. Any act in derogation of such laws is an absolute nullity.

XIII. C.C. Art #11 -- Conventions contrary to law or

P, D, J public policy; renunciation of benefits - Individuals can not by their conventions, derogate from the force of laws made for the preservation of public order or good morals.

XIV. C.C. Art. 12 (1870) -- Contravention of prohibitory law

P,D,J - Whatever is done in contravention of a prohibitory law, is void, although the nullity be not formally directed.

XV. C.C. Art. 3481 -- GOOD FAITH

C.C. Art. #3480 -- Good faith

P,D,J For purposes of acquisitive prescription, a possessor is in good faith when he reasonably believes, in light of objective consider-

ations, that he is owner of the thing he possesses. Acts 1982, No. 187, Sec 1.

With understandIng of the frequent suits in 1952 and 1953 by the Highway Department attorneys, it becomes quite obvious that the 1953 servitude had to have been known to be illegal at that time, thus showing BAD FAITH!

XVI. -- 22. GOOD FAITH

P,D,J C.C. Art. 487, Acts 1979, No. 180 Sec. 1, effective 1 January 1980

Possessor in good faith; definition

P, D, For purposes of accession, a possessor is in good faith when he possess by virtue of an act translative of ownership and does not know of any defects in his ownership. He ceases to be in good faith when these defects are made known to him or an action is instituted against him by the owner for the recovery of the thing.

XVII. 13. DENIAL OF DUE PROCESS (PROCEDURAL AND SUBSTANTIVE)

Note that District Court Judge denied Plaintiff procedural due process in many ways, in not approaching each and every statute 'that he should have, as mandated by C.E. Art. 202, Judicial Notice!

Also, as noted, time and again, there have been numerous substantive denials of due process, relating to refusal to approach all law, in misinterpreting some law, and in

applying wrong law!

XVIII. 14.-- Denial of equal protection

D,J The Judges, at each level, have ignored the Highway Department's gift of free use of this land to third parties, as well as allowing illegal use of land at the northwestern end of this highway system, as well as allowing illegal parking on the part of a few church groups within the highway confines. At the same timc, over the many years, the Highway Department has refused to allow property owner commercial use of property, at the same time allowing commercial use by other people!

XIX. --15. IGNORING LAW

ILLEGAL USE OF LAW

D,J Neither R.S. 19:14 nor 13:5111 relate to this case, because --

The State paid for property's use, although obtaining an illegal servitude!, -- and, -- both statutes relate only if payment had not occurred!

CC Art #1968 -- Unlawful cause

D,J The cause of an obligation is unlawful when the enforcement of the obligation would produce a result prohibited by law or against public policy. Acts 1984, No. 331, Sec 1.

CC Art #1953 -- Fraud may result from misrepresentation or from silence

D,J Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction. Acts 1984, No. 331, Sec 1.

CC Art #1894 Obligation not subject to compensation

D,J Compensation takes place regardless of the sources of the obligation.

Compensation does not take place, however, if one of the obligations is to return a thing of which the owner has been unjustly dispossessed, --

See Act 331, 1984, Sec 5, page 811 -- compensation

-- Art 1894.

See under Comments, page 812

D,J (b) -- Wrong doers or parties who have acted in bad faith are not allowed to set up the plea of compensation.

NB -- Herein, continued use of roadbed, etc, would be continuing compensation!

XX. 17. INCONSISTENT JUDGMENTS

Appeal Court Judge Marvin has repeated these tragic errors!

J The December, 1995 mandate-by the Supreme Court that C.C. Art. 2030 governs, -- demands use of C.C. Art. 2032, -- that such action does not prescribe, as well as use of C.C. Art. 2033 which man dates the return of the property in its prior physical state, or, if impracticable, payment of damages, to include fruits and revenues, in order to prevent unjust enrichment!
All of the above has been ignored! -- with the use of illegal law!

COMPENSATION

C. C. Art. 1894 - Obligations not subject to com pensations
D,J (Wrongdoers)

19. QUASI ESTOPPEL
Definition -- The principle precluding a party from asserting, to another's disadvantage, a right inconsistent with a position
D,J previously taken by him.
-- Includes "equitable estoppel" and embodies doctrine that one may not repudiate an act done or position assumed by him where such course would
2) work injustice to another rightfully relying thereon.

The principle of QUASI ESTOPPEL precludes DOTD from asserting (to Plaintiff's disadvantage), a right inconsistent with the position previously taken by DOTD, -- namely, Since DOTD insisted
D,J that the Servitude was legal and binding, until nulled by theSupreme Court decision of December, 1995, -- therefore, DOTD is precluded from using any statute disallowed by the "legal and binding

intent of the Servitude under color of law"! -- Therefore, no prescription can run!

20. C.C. Art. 6 -- RETROACTIVITY OF LAWS
In the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretativelaws apply both prospectively and retroactively, unless there is a
3) legislative expression to the contrary.

Comments

(c) According to a well-settled rule of statutory interpretation, procedural and interpretative laws apply both prospectively and retroactively unless
they violate vested rights or obligations of contracts.

J Note -- 1975 Statute of one year prescription is not retroactive, and cannot prevent payment of fruits and revenues from beginning of roadbed use about 1954 until the new statute on prescription (St. Julien). Also, St. Julien cannot apply in this case!

AND, FINALLY, --
PRECARIOUS POSSESSION

XXI. 19. PRECARIOUS POSSESSION

As noted herein, yet never before mentioned in this suit by Plaintiff, Defendent, or Judge, C. C. Art. 3477 mandates no prescription by a precari ous possessor!

Note that the Highway Department (DOTD) was a

precarious possessor of use of the servient estate for a roadbed as the dominant estate for itself. And, as precarious possessor, Defendent could not prescribe for title to said servient estate which it protected for servient estate owner, -- until 6 December 1995, -- when DOTD became an ADVERSE POSSESSOR!

SECTION NO. 1

C.E. ART. 202, JUDICIAL NOTICE OF LEGAL MATTERS

A. Mandatory. A court whether requested to do so or not shall take judicial notice of the laws of the United States, of every state, territory, and other jurisdiction of the United States, -

COMMENT: --

(Presumption: Each Judge has carefully studied all data in this case!)

1) C.C. Art. 12 -- Whatever is done in contravention of a prohibitory law, is void, although the nullity be not formally directed.

Note -that C.C. Art. 2030 voided the servi tude contract as an absolute nullity. In addition to the servitude contract being an absolute nullity, note that Art. 12 mandates that any action performed (done) under said contract, obviously which is in contravention of a prohibitory law (R.S.

48:312) is void! That means that the construction of the highway is void -- null -- so -- that its existence is void (noted to be a legal ideation)!

This particular C.C. Art. 12 prevents any possible type of prescription due to the physical existence of the highway since circa 1954, because such construction is made void--null by this Article!

Obviously, said highway physically exists! Nevertheless, any legal action must take into account that the law forces such legal action to act as if the highway never had been constructed, and has never existed, and does not exist! Perhaps, as of the December, 1995 Supreme Court Decision, the roadbed has physically existed (again"illegally, -- with one year prescription law able to be applied, -- except for this suit preventing such prescription!)

C.C. Art #1968 -- Unlawful cause

The cause of an obligation is unlawful when the enforcement of the obligation would produce a result prohibited by law or against public policy. Acts 1984, No. 331, Sec 1.

Note that the construction of the highway roadbed, etc, produced a result prohibited by law and against public policy, and the continuing existence of this physical entity is prohibited by law and against public policy! It is noted that the Louisiana State Supreme

Court decision of December, 1995 voided the servitude contract, and, as noted in Art. 12 (Whatever is done in contravention of a prohibitory law, is void, although the nullity be not formally directed) --therefore the continued existence of said roadbed, as well as its use, is void (v.s.)!

R.S. 19:14 and 13:5111 cannot relate to this case, because both statutes relate to actions where payment had not occurred! Note well that the State paid for this property's use, although in doing so, obtained an illegal servitude. It is also to be noted that in 1953, at time of Servitude purchase, purchase of such right of construction could not be considered as causing damage to said property! However, at the time of the 1995 Supreme Court decision, such action did become a "damage"! and now is illegally damaging the property!

4) C.C. Art. 1894 -- Obligation not subject to compen sation --

Compensation takes place regardless of the sources of the obligation.
Compensation does not take place, however, if one of the obligations is to return a thing of which the owner has been unjustly dispossessed,

See Act 331, 1984, Sec 5, page 811 --
Compensation Art 1894.

See under Comments, page 812

(b) -- Wrong doers or parties who have acted in bad faith are not allowed to set up the plea of compensation.

NB -- Herein, continued use of roadbed, etc, would be continuing compensation!

NOTA BENE The ongoing use of the roadbed, etc, is a continuing compensation to the Highway Department, and will continue to be a continuing compensation to the Highway Department, until said Highway Department purchases whatever rights might be needed for such continuing compensation!

5) C.C. Art. 3465 Acts 1982 No. 187, Sec. I- Interruption of acquisitive prescription -- Acquisitive prescription is interrupted when possession is lost.

Note that DOTD lost possession (under illegal servitude contract, yet under color of law) December '95, yet had never "possessed", as proven by the Supreme Court decision, December '95! -- as mandated by Supreme Court Decision!

6) C.C. Art. 2033, which is a mandated set of actions whenever
C.C. Art. 2030 is effective, -- this Art. 2033 has been ignored completely by all involved Judges, at the District, Appeal, and Supreme Court levels! Note that Judge Thaxton at the District Court level maintained that prescription applied, apparently not corrected by senior Judges! Again, it is to be noted that prescription does not apply to an absolute nullity, as noted under:

Adverse possession - 72 (2)

Smith vs. Taylor, 226 LA 235
La. C.C.- Arts. 11 and 12

Therefore, all acts done through Servitude Contract are void (null without legal force or binding effect)

Therefore, - 1) Use of land is void;

2) Construction of roadbed is void.

3) Continuing use of roadbed is void.

Therefore, prescription laws cannot apply.

7) Art. 3465 -- Acquisitive prescription is interrupted when possession is lost (Acts. 1982 187-Sec. 1) -- and since possession never occurred, prescription laws can not apply. It is noted that a new prescrip tion period began one day after filing and recording of the Supreme Court decision of December, 1995, which prescription has been interrupted by this new suit! Also, note that payment to property owner for use of property in 1953 allowed undamaging property use, which changed to damaging use by the December, 1995 Supreme Court decision. Again, one year prescription has been prevented by institution of this new suit!

8) C.C. Art. 3465 Act. 1892, No. 187, Sec. 1-- Interruption of acquisitive prescription -- Acquisitive Prescription is interrupted when pos-session is lost.

Note that DOTD lost possession with the Supreme Court decision of December, 1995,

its physical possession previously having been declared void. Only in December, 1995, did DOTD commence tortious posses sion of this roadbed!

9) C.C.Art. 3467 - Acts. 1982, 187, Sec. 1 -- Persons against whom prescription runs -- Prescription runs against all persons unless exception is established by legislation.

Even if the 1975 Statute of one year prescription after placement of highway were legal, damages would be due from the time of illegal establishment of said highway, circa 1953 until !975! Such has not been considered by any Judge.

10) C.C. Art. 3477. Precarious possession; inability to prescribe -- Acquisitive prescription does not run in favor of a precarious possessor --.

Nota Bene: This statute can stand alone, and null - void the decisions in this case! Certainly, payment to land owner for property's use for a roadbed in 1953, before construction, made the Highway Department a precarious possessor (certainly not an adverse possessor, --and certainly not a fee title owner)!

SECTION NO. 2

CODE OF JUDICIAL CONDUCT, CANON 2-A
(R.S. 13, VOL. 8)
Canon 2 -- A Judge Should Avoid Impropriety and the Appearance of
Impropriety in All His Activities.

A. A judge should respect and comply with law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

COMMENT

Other than to expose to each judge the rules and regulations by which he shall abide in his adjudications, I have recourse to the Federal Courts, as well as the Louisiana State Judiciary Commission, the latter being quite questionable regarding its willingness to act wisely, in my experience!

SECTION NO. 3

CODE OF JUDICIAL CONDUCT, CANON 3-A-1 (R.S. 13, VOL. 8) Canon 3 -- A Judge Should Perform the Duties of His Office Impartially and Diligently.

A. Adjudicative Responsibilities (1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clam or, or fear of criticism.

Appendix to Canon 3
"Court" means an appellate court and includes the Supreme Court of Louisiana and the Courts of Appeal of the several circuits.

COMMENT

See COMMENT under 2. Code of Judicial Conduct, Canon 2-A,
preceding page.

SECTION NO. 4

C.C. ART. 1968 (UNLAWFUL CAUSE)

CC Art #1968 -- Unlawful cause

The cause of an obligation is unlawful when the enforcement of the obligation would produce a result prohibited by law or against public policy. Acts 1984, No. 331, Sec 1.

COMMENT

This was mandated by the December, 1995 Supreme Court decision. Unfortunately, -- tragically, -- the Supreme Court altered the 1953 unlawful contract into another 'unlawful contract, because of said Court's neglect in applying the mandated effects of C.C. Art. 2030 by C.C. Art. 2033! -- also, by using R.S. 19:14, although land owner was paid before construction! -- also, by neglecting C.C. Art. 3477, which prevents prescription by a precarious possessor (detainer)!

SECTION NO. 5

C.C. ART. 1953 (FRAUD BY SILENCE)

CC Art #1953 --- Fraud may result from misrepresentation or from silence

Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction. Acts 1984, No. 331, Sec 1.

COMMENT

-- in this Suit, there has been both ignorance of law and ignoring of law! Apparently, fault lies upon the shoulders of Plaintiff, and Defendant (many Highway Department employees, including lawyers), as well as Defendant's counsel, as well as Judge involved herein!

Johnson v. Mansfield Hardwood Lumbar Company, 159 F. Supp. 104, 1958

Pg. 105 - 5. Fraud - Key 6.

Constructive fraud is a breach of legal or equitable duty which, irrespective of moral guilt of feasor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests, and neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud. See also 37 C.J.S. verbo Fraud, Section 2 p. 211, et seq.:

"Constructive fraud is a breach of legal or

equitable duty which, irrespective of the moral guilt of the fraud feasor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests. Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud.

"Constructive fraud usually arises from a breach of duty where a relationship of trust and confidence exists. "A fiduciary relation exists: Wherever confidence on one side results in superiority and influence on the other side; where a special confidence is reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing the confidence; where confidence is reposed and accepted, whether the origin is moral, social, domestic, or merely personal; or where a person has knowledge and authority which he is bound to exercise for the benefit of another person."

COMMENT

Plaintiff is inclined to fear fraud in this case, as shown by many, many actions on the part of Highway Department employees, as well as by many actions on the part of some Judges.

SECTION NO. 6

C.C. ART. 5 - IGNORANCE OF LAW

No one may avail himself of ignorance of the law

(6a. C.C. Art. 5, Comment (b) -

Ignorance is unexcusable for laws that are in force.

COMMENT

The above Statutes most certainly apply to each and every citizen,

(b) - 1) A physician, lawyer, judge!

NOTA BENE: -- A. K. Roy, Inc. v. Board of Commissioners, III So. 2nd 765 --
Pg. 767 -- R.S. 19:2.1, Subd. B. and C. C. Art. 2630 are applicable only to actions for damages and claims resulting from a legal expropriation of land, -- and R. S. 9:5624 applies only "when private property is damaged for public purposes," but not to actions for the recovery of the value of property taken for public purposes.
Greater Baton Rouge Air Port District v. Hays 339 So. 2nd 431 -- LSA-C. C. Art. 2630, R. S. 9:5624, -- making actions for damages to private property damaged for public purposes subject to prescription of two years, are applicable only to actions for damages and claims resulting from legal expropriation.

SECTION NO. 7

C.C. ART. 7 (SOURCE: C.C. ARTS. 11, 12 (1870)

Persons may not by their juridical acts derogate from laws enacted for the protection of the public interest. Any act in derogation of such laws is an absolute nullity.

COMMENT

Note that Judges shall take Judicial notice of each and every statute, and shall not derogate, in this instance, particularly relating to C.C. Art. 2030 - 33, noting that 2033 gives the specific mechanism that shall be used by the Judiciary!

Plaintiff maintains that the various statutes mentioned herein force maintaining nullity, and force maintaining no possible prescription on the part of the Highway Department!
It should be noted with great dismay that the end results of the juridical acts since the original decision that C.C. Art. 2030 holds herein, -- that all further juridical acts have derogated from such laws enacted for the protection of the public interest, making each and every act in derogation of such laws an absolute nullity!
Please refer to comments on page 14.
Also, note that C.C. Art. 3477, regarding precarious possession, -- forces an absolute nullity, mandating that DOTD has had no rights herein (and,. therefore, owes damages, including fruits and revenues, -- and, also, must purchase property holding the roadbed!).

SECTION NO. 8

C.C. ART #11 -- Individuals can not by their conventions, derogate from the force of laws made for the preservation of public order or good morals.

COMMENT

Please refer to comments on page 14.

SECTION NO. 9

C.C. ART. 12 (1870) -- Whatever is done in contravention of a prohibitory law, is void, although the nullity be not formally directed.

COMMENT

-- Therefore, the highway's existence is void! This means that the construction of the highway is void -- null. This particular C.C. Art. 12 prevents any possible type of prescription due to the physical existence of the highway since 1954, because such construction is made void - null by,this Art.! Obviously, said highway physically exists! Nevertheless, any legal action must take into account that the laws force such legal action to act as if the highway never had been constructed!

Please refer to comments on page14.
Certainly, the highway exists physically. However, since DOTD's precarious possession as a detainer was lost by the Dec, 1995 Supreme Court decision, giving it adverse possession, -- the present suit stopped potential prescription of one year!

SECTION NO. 10
C.C.P. ART. 2001-6 (NULLITY)

COMMENT

CC Art #2030 -- Absolute nullity of contracts

A contract is absolutely null when it violates a rule of public order, as when the object of a contract is illicit or immoral. A contract that is absolutely null may not be confirmed.

CC Art 2033 -- Effects

An absolutely null contract, or a relatively null contract that has been declared null by the court, is deemed never to have existed. The parties must be restored to the situation that existed before the contract was made. If it is impossible or impracticable to make restoration in kind, it may be made through an award of damages.

Comments

(b) The restoration of the parties to the situation that existed before the contract that is called for by this Article includes restoration of fruits and revenues, as any unjust enrichment of the parties must be prevented.

See Art. 7, 11, 12, and R.S.48:312: --

Whatever is done in contravention of a prohibitory law is void, although the nullity be not formally directed.

(N.B. -- The act of highway construction is

void, making the highway void, -- non-exis tent!)

COMMENT

It should be noted that the Appeal Court Judgment is an absolute nullity, since said adjudication was recorded after the December, 1995 Supreme Court decision *, which mandated use of C.C. Art. 2030

*Also both claim and issue preclusions are effected herein (res judicata, etc)! and the consequences of C.C. Art. 2030, as noted by C.C. Art. 2032 and 2033.

The only means to a legal end result can be use of C.C. Art. 2033:

1) Return land as it was*, and
2) Pay damages-fruits-revenues-in order to prevent unjust enrichment.

* Consider continuing the roadbed as it is, but pay owner

1) Cost of removing roadbed
2) Cost of returning levee
3) Cost of removing levee
4) Cost of returning roadbed
5) And purchase of property at today's prices, noting that the levee was abandoned a few years ago!

With voiding of Servitude, -- it means that it never existed, that all changes thereby are voided, and that laws applicable to legal Servitudes shall not apply. This means that there has been an illegal taking (tort), trespass (tort), and fraud, relating to refusal to return that part used by third parties, due to an excess taking, plus denial of equal protection, with ongoing use by third parties in other areas relating to churches

and commercial enterprises!

C.C. Art. 2030 -- Conventional Obligations, Contracts, Book 3, Title 4, Note 2.

2. Ratification –

> Absolute nullities established in interest of individuals are susceptible of ratification, either expressly or impliedly, and may be prescribed against, while such nullities in derogation of public order and good morals are never susceptible of ratification and can never be prescribed against. Whitney Nat. Bank of New Orleans v. Schwob, 1943, 203 La. 175, 13 So. 2nd 782.

The application of Servitude Law was illegal, particularly noting C.C. Art. 3477; -- a precarious possessor cannot prescribe, -- ,as was the refusal to return the excess taking about 1955, the allowance of third party use, the refusal to return the excess taking in 1963 due to liberative prescription, the refusal to return the excess taking in 1966 after request, and the refusal to return three-thirds of the excess taking in 1989, returninq only two-thirds of the excess taking, in collusion with the City, to hold the other one-third, because of its potential future need for highway purposes!

As reqards the term "ill practice", the refusal of each judge to answer in writing each of Plaintiff's complaints, which proves inadequate study, with inadequate understanding of statutory meanings, and use! -- proves that these claims were simply ignored!

This type of "ill practice" deprives Plaintiff of one's legal rights.

Also, this iudgment is unconscionable and inequitable, such that an action for nullity should prevail!

It is a denial of due process in refusing to use the effects of C.C. Art. 2030, as listed by 2033! It is to be noted that

certain claims and certain issues have been ignored completely by the judges, and, in not mentioning such, there can be no preclusion of such an unmentioned claim or issue! As noted under C.C. Art. 2004. -- Annulment for vices of substance. -- action must take place within one year of Plaintiff's discovery of the fraud or ill practices. It should be noted that this year began with the acceptance of the Appeal Court's adiudication on damages by the Supreme Court, which completely ignored Plaintiff's counsel's admonishings!

This shows a depriving of litigant's legal rights, so that enforcement of this judgment would be unconscientious and inequitable! Plaintiff's legal rights are denied when Judge uses wrong law, and even misinterprets this wrong law!

Such iudgment may be annulled, when the ground for nullity has not been considered by the appellate court!

SECTION NO. 11

DENIAL OF DUE PROCESS (PROCEDURAL AND SUBSTANTIVE)

Note that District Court Judge denied Plaintiff procedural due process in many ways, in not approaching each and every statute that he should have, as mandated by C.E. Art. 202, Judicial Notice!

Also, as noted, time and again, there have been numerous substantive denials of due process, relating to refusal to approach all law, in misinterpreting some law, and in applying wrong law!

COMMENT

Please refer to comments on page .

R. S. 13:5111 -- Appropriation of property
Pg. 1 -- Suit for compensation for the taking of property by defendant, other than through expropriation proceeding, shall include attorney, engineer, appraisal fees --. Actions for compensation for property taken shall prescribe three years from date of such taking.

NOTA BENE: -- This suit is not for compensation for a taking, because Highway Department had paid owner for a servitude! Therefore, prescription of three years is meaningless, and cannot apply! This suit is for compensation for damages due to the following:

1) Refusal to return property allowed for third party use (which proved an excess taking developing a few years after servitude contract was purchased!

2) Refusal to return such excess taking when lost by liberative prescription in 1963 (ignorance of law is no excuse)!

3) If impracticable to return land as it was before servitude contract changes, then damages to include fruits and revenues since 1953 are due and owing, in order to avoid unjust enrichment! Also, the roadbed must now be purchased!

4) Refusal to pay fruits and revenues from onset of liberative prescription

in 1963, while insisting that the servitude contract was valid and binding, -- yet quitclaiming back to Plaintiff about two-thirds of such excess taking which was lost by liberative prescription, continuing to insist that such one-third not quitclaimed is to be used for future highway construction (see IntraDepartmental Notes!).

R. S. 13:5111 -- Appropriation of property
Note 2.
Notes of decisions.
Pg. 27 -- 1. Prescription -- When private property is damaged for public purpose, any and all actions for damages are prescribed by the prescription for two years, --
but, when property is taken by State --, without expropriation, actions for compensation prescribed three years from date of taking. (Riley v. Consolidated -- 642 - So. 2nd 693, 1994)

NOTA BENE: This property was taken without expropriation, and its use by servitude was paid for by the Highway Department, compensating the owner at the time of filing and recording said servitude.
This suit has never been concerned with compensation for servitude rights, but with compensation for the discovery (inverse condemnation) about 1982-1985 of the servitude's

illegality, and its absolute nullity, which nullity mandates either

1) Return of property as it was before change, or
2) Pay damages to include fruits and revenues, to avoid unjust enrich ment!

Also, the roadbed property must be purchased from owner, by the wrongdoer, without any compensation from return of this proper ty!

Pg. 28 -- Where property is taken or damaged without expropriation proceeding, there is inverse condemnation, for which award of attorney fees is provided by statute (Naquin v. DOTD - 604 So. 2nd 62).

Expropriation -- R. S. 19:2.1

Note 10 -- Prescription, pg. 308 -- C. C. Art. 2630, R. S. 9:5624 -- actions for damages to private property damaged for public purposes, subject to two year prescription, -- applicable only to actions for damages and claims resulting from legal expropriation (Greater Baton Rouge Airport v. Hays -- 339 So. 2nd 431, 1976).

A.K. Roy, Inc. v. Board -- 111 So 2nd 765, 1959

Pg. 765 - 1. Eminent domain - Key 288 (2) -- two year prescription regarding legal expropriation is not applicable against appropriated land.

Pg. 767 - [1,2] -- R. S. 19:2.1 Subd. B. and Art. 2630 R.C.C. are applicable only to actions for damages and claims through legal expropriation.

Also, R. S. 9:5624 applies only "when private property is damaged for public purposes," but not to actions for the recovery of the value of property taken for public purposes.

NOTA BENE: -- Here, again, this suit does not relate to recovery of values for property taken, which have already been paid for, -- but to payment of damages relating to fruits and revenues over years, plus payment for ownership of property at this time!

SECTION NO. 12

DENIAL OF EQUAL PROTECTION

The Judges, at each level, have ignored the Highway Department's gift of free use of this land to third parties, as well as allowing illegal use of land at the northwestern end of this highway system, as well as allowing illegal parking on the part of a few church groups within the highway confines. At the same time, over the many years, the Highway Department has refused to allow property owner commercial use of property, at the same time allowing commercial use by other people!

COMMENT

Please refer to comments on page14 .
Please refer to comments on pages 11 and following.
See comments under 11 - Denial of Due Process.

SECTION NO. 13
IGNORING LAW
ILLEGAL USE OF LAW

Neither R.S. 19:14 nor 13:5111 relate to this case, because--The State paid for property's use, though obtaining an illegal servitude!, -- and, -- both statutes relate only if payment had not occurred!

CC Art #1968 -- Unlawful cause
The cause of an obligation is unlawful when the enforcement of the obligation would produce a result prohibited by law or against public policy. Acts 1984, No. 331, Sec 1.

CC Art #1953 - Fraud may result from misrepresentation or from silence

Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction. Acts 1984, No. 331, Sec 1.

CC Art #1894 -- Obligation not subject to compensation --
Compensation takes place regardless of the sources of the obligation.
Compensation does not take place, however, if one of the obligations is to return a thing of which the owner has been unjustly dispossessed, --
See Act 331, 1984, Sec 5, page 811 -- compensation --
Art 1894.

See under Comments, page 812

(b) -- Wrong doers or parties who have acted in bad faith are not allowed to set up the plea of compensation.

NB -- Herein, continued use of roadbed, etc, would be continuing compensation!

NOTA BENE -- The ongoing use of the roadbed, etc, is a continuing compensation to the Highway Department, and will continue to be a continuing compensation to the Highway Department, until said Highway Department purchases whatever rights might be needed for such continuing compensation!

Appeal and Error - Key 1008.1 (5,7), 1010.1 (5)

Ardoin v. DOTD

679 S-2, 928, 1996

Two-part tests for reversal

1) Reasonable factual basis does not exist for trial court's finding, and
2) Record establishes that finding is clearly wrong (manifestly erroneus). Naquin v. DOTD, 604 So. 2nd 62, 1992

Pg. 62 -- 2. Eminent Domain - Key 262 (4) When expert's well reasoned testimony supports award of damages in public taking case and is accepted by trier of fact, property owner should prevail.

8. Eminent Domain - Key 316
Where property is taken or damaged without expropriation proceeding there is inverse condemnation, for which award of attorney fees is provided for by statute. LSA-R.S. 13:5111.

Pg. 65 The foregoing provision applies to "the intentional or purposeful expropriation or appropriation of private property for a public use or convenience." See Angelle v. State, 212 La. 1069, 34 So. 2nd 321, 2 A.L.R. 2nd 666. Under this provision, property is "taken" when the public authority acquires the right of ownership or one of its recognized dismemberments. See Parish of Jefferson v. Texas Co., 192 La. 934, 189 So. 580; 2 Nichols, Eminent Domain, Sec. 6.1[1] (3d ed. rev. 1963); 24 La. Law Rev. 849, 850-851. Property is considered "'damaged" when the action of the public authority results in the diminution of the value of the property. Parish of Lafayette, etc. v. Hernandez, 232 La. 1, 93 So. 2nd 672; Texas Pipe Line Company v. Barbe, 229 La. 191, 85 So. 2nd 260; 4 Nichols, Eminent Domain, Sec. 14.2 (ed. rev. 1963). In the event of a public taking, the Louisiana Constitution attempts to compensate the damaged party "to the full extent of his loss." La. Const. Art. I, Sec. 4. Such "full compensation" has been held in include cost of relocation, inconvenience and loss of prof its. State, DOTD v. Dietrich, 555 So. 2nd 1355 (La. 1990). Additionally, loss of business and replacement costs have also been recognized as compensable items of damages in these cases. (Business Losses) - State, DOTD v. Sheridan 517 So. 2nd 415

(la. App., lst Cir., 1987); (Replacement Costs) - State, DOH v. Constant, 369 So. 2nd 699 (la. 1979).

Comment -- No clinic -- No income!

Veillon v. Columbia Gulf Transmission Company, 192 So. 2nd, 646 Pg. 649 -- 2. In the original St. Julien decision t he court had noted that, if the entry had been unlawful instead of with the acquies cence of the landowner, then the payment of damages would not have the effect of making the appropriation legal; the company would remain liable to successive actions for the continuing trespass until the property was lawfully expropriated. 35 La. Ann. 926. See also Sigue v. Texas Gas Transmission Corp., La. App. 3 Cir., 154 So. 2nd 800, certiorari denied.

Veillon does not apply!

R.S. 19:14. Possession of property; removal of facility; and objection; waiver.

Pq- 170 - 5. Acquiescence, St. Julien doctrine "St. Julien" doctrine, under which landowners were deemed to have acquiesced in improvements placed on their property by public corporations provided they knew of construction, applies to improvements in place at time Supreme Court overruled doctrine. Howard v. Louisiana Power & Light Co., App. 5 Cir. 1991, 583 So. 2nd 503.

This shows that the roadbed was not

a damage, but an improvement! (It became a damage as of the Supreme Court Decision of December, 1995!)

Pg. 171 - 6. -- Burden of proof, St. Julien doctrine
Under the St. Julien doctrine, a servitude is acquired on only that portion of an owner's property that is physically occupied and the burden is on the occupant to prove the extent of the land used. State, Through Dept. of Highways v. Champagne, App. 1 Cir. 1979, 371 So. 2nd 626, writ granted in part, denied in part 375 So. 2nd 645, writ denied 375 So. 2nd 646, reversed in part 379 So. 2nd 1069, on remand 391 So. 2nd 1234.
N. B. - The Quitclaim was an admission of excess taking!

PRESCRIPTION

Roy v. Board of Commissioners, 111 So 2nd 765
Pg 767 -- [1,2] In support of the plea of two-year prescription in the lower court, defendant relied on the provision of R.S. 19:2.1, subd. B, Article 2630 of the Civil Code, and R.S. 9:5624; but, apparently conceding the correctness of the trial judge's ruling that R.S. 19:2.1, subd. B and Article 2630, R.C.C., are applicable only to actions for damages and claims resulting from a legal expropriation of land, defendant, in this court, relies solely on R.S. 9:5624. This section is equally inapposite to the case at bar, since, by its very language, it applies only "when private property is damaged for public purposes," but not to actions for the recovery of the value of property taken for public purposes.
R.S. 19:2.1 -- Expropriation, Pg 308.

10. Prescription.

LSA-C.C. Art. 2630, R.S. 9:5624, and this section making actions for damages to private property damaged for public purposes subject to prescription of two years, were applicable only to actions for damages and claims resulting from legal expropriation. Greater Baton Rouge Airport Dist. v. Hays, App. 1976, 339 So. 2nd 431, writ denied 341 So. 2nd 403.

Pg. 305, Sec. 2.1 - Petition for expropriation
Comment -- This relates to expropriation, and not appropriation!

Constance v. State through DOTD, 626 So 2nd, 1151 (Louisiana, 1993)

Pg. 1156 -- [2] Furthermore, La. Const. Art. 1, & 4 and its predecessor article, La. Const. of 1921 Art. I, 2, have been interpreted to support a proceeding by a property owner for a taking or damaging even in the absence of an expropriation action. Despite the legislative failure to provide a procedure to seek redress when property is damaged or taken without the proper exercise of eminent domain, this Court has held that a cause of action must arise out of the self-executing nature of the constitutional command to pay just compensation. Chambers, 595 So 2nd at 602; Reymond v. State, through the Department of Highways, 255 La. 425, 231 So. 2nd 375, 383 (1970). Such a cause of action is referred to as an inverse condemnation, which is defined in Reymond as the "proceeding whereby an owner may seek redress when his property is damaged or taken without the proper exercise of eminent domain."

Rivet v. the State, DOTD, 635 So 2nd 295

Pg 297 -- In Parish of Jefferson v. Tassin, 594 So 2nd 525 (La. App. 5 Cir. 1992) we observed:

> A taking or damaging of property can occur from the official act of expropriating a whole or partial tract of land or from inverse condemnation, which is when property is taken or damaged without the proper exercise of eminent domain. Reymond v. State, Department of Highways [255 La. 425] 231 So. 2nd 375 (La. 1970).

In addition, when state activity causes a landowner "to sacrifice all economically beneficial uses in the name of common good, that is, to leave his property economically idle, he has suffered a taking." Lucas v. South Carolina Coastal Council, -- U.S. --, 112 S. Ct. 2886, 120 L. Ed. 2nd 798 (1992).

Miller v. Colonial Pipeline 173 So 2nd 840

Pg. 841 -- Eminent Domain - Key 288 (2)

> Codal two-year prescriptive period when private property is damaged for public purposes applies where right to use land was acquired by conventional agreement as well as where it was acquired by *lawful* appropriation. LSA - R.S. 9:5624.

The general expropriation statute provides in LSA - R.S. 19:2.1 (B) as follows:

> "All claims for property by, or for damages to the owner caused by the expropriation of property pursuant to R.S. 19:2 shall be barred by the prescrip tion of two years commencing on the date on which the property was actually occupied and used for the purposes of the expropriation.
> Added Acts 1950, No. 238, & 1."

[7, 8] Counsel for Colonial suggests that LSA - R.S. 9:5624 has the sole purpose of providing a prescriptive period applicable to "appropriations", because prior to 1950

there were none. We think clearly it does apply to lawful appropriations. --

Cruell v. Jefferson Parish, 216 So. 2nd 604 Pg. 607 - [1,2] Before we reach a consideration of this problem however we must deal with a plea of prescription which is urged by the Parish. It contends LSA R.S. 9:5624 should apply in this situation and that the prescription of two years should now bar plaintiff's suit.

This contention is disposed of by the rationale of the Supreme Court in A. K. Roy, Inc. v. Board of Commissioners, 237 La. 541, 111 So. 2nd 765 (1959). There the Supreme Court stated:

> "In support of the plea of two year prescription in the lower court, defendant relied on the provision of R.S. 19:2.1, subd. B, Article 2630 of the Civil Code, and R. S. 9:5624; but, apparently conceding the correctness of the trial judge's ruling that R.S. 19:2.1, subd. B and Article 2630 R.C.C., are applicable only to actions for damages and claims resulting from a legal expropriation of land, defendant, in this court, relies solely on R.S. 9:5624. This section is equally inapposite to the case at bar, since, by its very language, it applies only 'when private property is damaged for public purposes,' but not to actions for the recovery of the value of property taken for public purposes."

Greater Baton Rouge Airport District v. Hays, 339 So. 2nd Pg. 432 - 4. 431 Eminent Domain - Key 288 (2)

> Expropriation: Statutes making actions for damages to private property damaged for public purposes subject to prescription of two years were applicable only to actions for damages and claims resulting from legal expropriation. LSA - C.C. Art. 2630; LSA - R.S. 9:5624,

19:2.1, subd. B.

6. Eminent Domain - Key 288 (2)
Expropriation: Statute providing that actions for damages to property damaged for public purposes are prescribed by two-year prescriptive period applies only when private property is damaged for public purposes and not when private pr property is taken for public purposes. LSA - R.S. 9:5624.

Pg. 435 - [6,7] The prescriptive period provided by this statute applies only when private property is damaged for public purposes and not to actions for the recovery of the value of private property taken for public purposes. A. K. Roy, Inc. v. Board of Commissioners, supra. In the present case, the appellees seek compensation for the property taken, the avigation servitude, and not for damages sustained as a result of prior flights. The appellees' right to seek just compensation has not prescribed.

N.B. - Highway Department paid owner for servitude right of way contract, making this a taking. Also, no damages developed by roadbed construction, because such construction improved the property's value!

LeBlanc v. City of Lafayette, 558 S9 2nd 259

2. Limitation of actions - Key 6 (9) -- Amended version of prescriptive statute could not be applied retroactively to revive property owners cause of action against city for damages.

N. B.– This roadbed was not a damage because it was paid for and was an improvement to the property. There was no expropriation, -- rather, a com-

pensated taking by a servitude-contract, although the contract was illegal (although it was felt to be legally valid and binding by both Plaintiff and Defendant from the time of its signing until the illegality was discovered and suit developed between '82 and '85, and by Defendant until corrected by Supreme Court Decision of December, 1995!

R. S. 9:5624 -- Actions for damages to property damaged for public purposes.

Pg. 536 -- N. B. -- Actions for damages to property damaged for public purposes are prescribed by two-year prescriptive period, but does not apply when private property is taken for public purposes. Greater Baton Rouge Airport District v. Hayes, 339 So 2nd 431

This section and LSA-C.C. Art. 2630 and R.S. 19:2.1 making actions for damages to private property damaged for public purposes subject to prescription of two-years, were applicable only to actions for damages and claims resulting from legal expropriation.

This section applies where right to use land was acquired by conventional agreement as well as where it was acquired by lawful appropriation. Miller v. Colonial Pipeline Company, 173 So. 2nd 840 -- 175 So. 2nd 644.

Wilson v. DOTD, 464 So. 2nd 343

Pg. 343 --

1. Eminent Domain - Key 58 -- State did not obtain legal title to property where it "over-expropriated" it.

2. Eminent Domain - Key 58 -- State is entitled to

take what it needs for public purposes; any over-expropriation is illegal.

3. Eminent Domain - Key 266 - "Over-expropriation by State and consequent lack of acquisition of lawful title to property constituted an act of dominion wrongfully asserted over the property inconsistent with or in denial of owner's rights, amounting to a tortious conversion.

6. Limitation of Actions - Key 55 (6) -- Prescription did not begin until conduct causing damage was abated, since wrongful conduct was continuous where State had "over-expropriated" property, denying owner access and use of the land.

7. Eminent Domain - Key 288 (1) -- Action to recover attorney fees following successful action to regain possession of land wrongfully "over-expropriated" by State was within the prescriptive period when brought within one year of the last wrongful occupancy by State,. LSA-C.C. Art. 3536 (Repealed). N. B.: DOTD continues to wrongfully occupy!

Roy v. Board of Commissioners for the Pontchrtran Levee District, 111 So 2nd 765

Pg. 767 --

5. "All claims for property by, or for damages to the owner caused by the expropriation of property pursuant to R. S. 19:2 shall be barred by the pre scription of two years commencing on the date on which the property was actually occupied and used for the purposes of the expropriation.

Added Acts. 1950, No. 238, 1."

[1,2] In support of the plea of two-year prescription in the lower court, defendant relied on the provision of R.S. 19:2.1, subd. B, Article 2630 of the Civil Code, and R.S. 9:5624; but, apparently conceding the correctness of the trial judge's ruling that R.S. 19:2.1, subd. B and Article 2630, R.C.C., are applicable only to actions for damages and claims resulting from a legal expropriation of land, defendant, in this court, relies solely on R.S. 9:5624. This section is equally inapposite to the case at bar, since, by its very language, it applies only "when private property is damaged for public purposes," but not to actions for the recovery of the value of property taken for public purposes.

R.S. 19:2.1 -- EXPROPRIATION

Pg. 308 -- 10. LSA-C.C. Art. 2630, R.S. 9:5624, and this section making actions for damages to private property damaged for public purposes subject to prescription of two years, were applicable only to actions for damages and claims resulting from legal exoropriation. Greater Baton Rouge Airport Dist. v. Hays, App. 1976, 339 So. 2nd 431, writ denied 341 So. 2nd 403.

Pg. 306 -- R.S. 19:2.1 - B. All Claims for property by, or for damages to the owner caused by the expropriation of property pursuant to R.S. 19:2.1 shall be barred by the prescription of two years commencing on the date on which the property was actually occupied and used for the purposes of

the expropriation.
Please refer to comments on page 14 .
Please refer to comments on pages 22 and following.
See comments under - Denial of Due Process.

SECTION NO. 14
ILLEGAL USE OF LAW
R. S. 19:14, R. S. 19:2.1, R. S. 13:5111, R. S. 9:5624

21. ADVERSE POSSESSION -- 1 La. D 2nd -- 548 71 (2) -- Prescription does not apply to an absolute nullity (La.-Smith v. Taylor, 75 So. 2nd-850, 226 La. 235)

La. 1957. An absolutely null deed cannot form basis for conclusive prescription of 10 years by grantee named therein; but such grantee can convey to purchaser in good faith a title which can form basis for plea of acquisitive prescription. LSA-C.C. Arts. 3478, 3479. Boudreaux v. Olin Industries, Inc., 94 So. 2nd 417, 232 La. 405.

C. C. 3478-79 -- Adverse Possession requires

1) Good faith

2) Title translative of property

3) Possession during time required by law

4) Object able to be acquired by prescription.

NOTA BENE:

1) Bad faith shown by Exh. AAA.

2) Property title not translated, -- only a right of way servitude being sold, and not fee title.

3) Possession was only through this right of way servitude, felt to be legal by Plaintiff, although Defendant knew or should have known of its illegality (by Exh. AAA), -- yet legality was maintained under "color of law" until discovery of apparent illegality by Plaintiff about 1982-1985, -- and proven illegal by Supreme Court decision, December, 1995!

4) Object unable to be prescribed

a) Valid right of way servitude under color of law until December 1995

b) Suit #2 after December, 1995, preventing one year prescription!

C) Adjudication based upon C. C. Art. 2030, which shall be finalized by C. C. Art. 2033!

This has yet to be done by Court action! -- which is denial of due process both procedural and substantive, abuse of discretion, malfeasance, etc!

SECTION 15
RESPONSE TO VARIOUS JUDGES' COMMENTS REGARDING STATUTES RELATING TO PRESCRIPTION OF PLAINTIFF'S RIGHTS

Louisiana Revised Statutes -- 19:14
19:2.1
13:5111

La. R. S. 19:14 -- is discussed under EXPROPRIATION
- -- Relates to State taking
  - -- In good Faith
  - -- With authority to so act
  - -- With consent or acquiescence of owner
- -- Property owner waives rights
  - -- To contest the necessity for the taking
  - -- And to receive just compensation prior to the taking
  - -- But may bring action for compensation as if State had petitioned for expropriation as per La. R. S. 19:2.1

-- N. B. -- Above cannot apply, -- because
- -- The taking was through a servitude, legal under color of law for many years at the insistence of the Highway Department, until finally voided by the Supreme Court decision of December, 1995!
- -- The taking through servitude was paid for by the Highway Department, by a check to the property owner, as of date of filing and recording of said Servitude!
- -- La. R. S. 19:14 is irrelevant!
  - -- The Judge's are misapplying law, are ignorant of law, abuse discretion, and practice misfeasance and malfeasance!

La. R. S. 19:2.1 -- is discussed under EXPROPRIATION!

(B) -- All claims for property or damages caused by the expropriation barred -- by a prescription two years --

(10) -- Page 308 -- actions subject to two year prescription applicable only to damages and claims resulting from legal expropriation (Greater Baton Rouge Airport District V--

N. B.– The above cannot apply, -- because

-- This was not an expropriation

-- Petition for expropriation was never filed.

-- Claims for property (not "damage") were previously paid for by Highway Department to property owner, through servitude contract (and, although illegality was proven in 1995, -- the Highway Department - DOTD insisted on its legality until forced to relent by the 1995 Supreme Court decision, -- making the servitude valid under color of law from 1953 until the Supreme Court decision in 1995!

-- Later claims relate to ongoing illegal commercial use by third parties allowed by Highway Department, such illegal use by such third parties proving a change from a non-excess into an excess taking, noting all property lying within highway boundaries (as noted on similar property at the Northwest end of this highway system!).

La. R. S. 13:5111 -- Non-expropriation taking compensa-

tion by suit -- such actions prescribe three years from date of such taking

-- N. B. -- Compensation was made at the time of filing and recording of the Servitude Contract!

COMMENTS

Nota Bene: -- In addition to R. S. 19:14, 19:2.1, and 13:5111, --note that R. S. 9:5624 should be studied --
Actions for damages to property damaged for public purposes.

Note 1, Pg 536 -- Are prescribed in two years after completion and acceptance of the public works.

-- Here, again, such actions are a damaging and not a taking! -- Greater Baton Rouge Airport District v. Hays, 339 So. 2nd, 431, -- Writ denied 341 So. 2nd 403.
This section and C. C. Art. 2630 and R. S. 19:2.1 applicable only to damages and claims resulting from legal expropriation. Id.
R. S. 5624 does not bar suit for compensation for property taken -- Cruell v. Jefferson Parish, 216 So 2nd 604, Writ denied 219 So. 2nd 175.
Applies where right to use land was acquired by conventional agreement as well as by lawful appropriation -- Miller v. Colonial Pipeline, 173 So. 2nd 840, Writ denied 173 So. 2nd 644 (N.B. - This property was acquired by an illegal - unlawful act!)

Note 12, Pg 538 -- "Continuing tort" theory that prescrip-

tion does not begin to run until tortious con duct ceases does not apply to two year prescription vs. public body for damage done -- Gaharen v. DOTD, 566 So. 2nd 1007, Granted 571 So. 2nd 619 (Therefore, this case involves tort!)

CONCLUSION

The above statutes cannot apply herein and are irrelevant. Insistence by Judges is

-- Ignorance of law
-- Ignoring of law
-- Abuse of discretion
-- Misfeasance, malfeasance,
-- And, patently UNJUST!

SECTION NO. 16
CLAIM PRECLUSION AND ISSUE PRECLUSION
(RES JUDICATA) (COLLATERAL ESTOPPEL)

R.S. 13:4232 -- Exceptions to the general rule of res judicata A judgment does not bar another action by the plaintiff:

(1) When exceptional circumstances justify relief from the res judicata effect of the judgment;

(2) When the judgment dismissed the first action without prejudice; or

(3) When the judgment reserved the right of the plaintiff to bring another action.

Added by Acts 1990, No. 521, Sec. 1, eff. Jan. 1, 1991.

Comment - 1990

R.S. 13:4232 creates three exceptions to the general principle of res judicata set forth in R.S. 13:4231. First, it gives the court the discretion to grant relief from the judgment for exceptional circumstances. This discretion is necessary to allow the court to balance the principle of res judicata with the interests of justice. This discretion must be exercised on a case by case basis and such relief should be granted only in truly exceptional cases, otherwise the purpose of res judicata would be defeated. For the application of a similar principle see Federal Rule of Civil Procedure 60 (b). Second, it gives the court the authority to reserve in the judgment the right of the plaintiff to bring a subsequent action. This would be particularly useful in custody, support and divorce actions and in cases involving injunctions and installment contracts. It could also be useful in cases where the plaintiff may be unsure whether he will suffer future injuries from the event which he is presently litigating, e.g., risk of

contracting cancer from exposure to asbestos. See, Adams v. Johns-Manville Sales Corp., 783 F. 2nd 589 (5th Cir. 1986); Jackson v. Johns-Manville Sales Corp., 781 F. 2nd 394 (5th Cir. 1986). But it is not intended to apply in the case where the plaintiff has simply failed to assert a right or claim for damages through oversight or lack of proper preparation.

CLAIM AND ISSUE PRECLUSION

Claim preclusion is Res Judicata

Issue Preclusion is Collateral Estoppel

N.B. -- Although the District Court's adjudication on the Merits For Damages occurred before the Supreme Court's adjudication on the Partial Summary Judgment, the Appeal Court's adjudication on the Merits occurred after the Supreme Court's adjudication on the Partial Summary Judgment.

> This became Res Judicata (claim preclusion) as well as Collateral Estoppel (issue preclusion) because the Supreme Court forced use of 2030 and 2033.

Res Judicata (claim preclusion) must have the following:

1. Same cause of action
2. Prior judgment final
3. Prior judgment on merits
4. Prior judgment valid

Collateral Estoppel (issue preclusion) must have:

1. Same issue
2. Issue was litigated
3. Issue was necessarily determined
4. Party had the incentive to litigate anything

Therefore, the Supreme Court erred in allowing District Court's action, and should null this due to both claim and

issue preclusion as of the Supreme Court's decision of December 1995. This means that the Appeal Court's adjudication, coming after December, 1995 must be null due to both claim and issue preclusion!
That is, this case must have applied C.C. Arts. 2030-33, and nothing else, which might null the effects of 2030!

NOTA BENE: Claim preclusion regarding St. Julien claims to alter ownership are precluded by:

> Issue preclusion, noting that ownership was finalized by the Supreme Court Decision of December 8, 1995, which ownership was litigated and decided! This decision extinguished all claims of owner ship by DOTD, and conclusively determined said disputed rights! --this is a direct and/or collateral estoppel to the present DOTD claims!

The issues of trespass, St. Julien, etc, were noted prior to the December 1995 ruling,-- and cannot be re-introduced now, due to

1. Claim preclusion, relating to merger and bar, and

2. Issue preclusion, relating to direct and collateral estoppel!

SECTION NO. 17

INCONSISTENT JUDGMENTS

The December, 1995 mandate by the Supreme Court that C.C. Art. 2030 governs, -- demands use of C.C. Art. 2032, -- that such action does not prescribe, as well as use of C.C. Art. 2033 which mandates the return of the property in its prior physical state, or, if impracticable, payment of damages, to include fruits and revenues, in order to prevent unjust enrichment!

All of the above has been ignored! -- with the use of illegal law!

FAULTS

I -- Omitting judicial notice of many statutes

II-- Omitting judicial notice of judicial conduct

III-- Inconsistent judgments relating to

A - Acceptance of C.C. 2030

B - Omission of C.C. 2033, which actions must follow use of C.C. 2030 (the effects of 2030 through 2033 are preclusive!)

1. To return property as it existed physically before the Servitude Contract or
2. To pay damages, -- and
3. To pay fruits and revenues, -- and
4. To avoid unjust enrichment

IV-- Ignorance of law (forcing use of erroneous law and erroneous facts)

V Ignoring of law and facts (which forced use

of erroneous law and erroneous fact) (mis feasance and malfeasance)

VI -- Erroneous rulings of law

VII -- Abuse of discretion

VII I-- Malum prohibitum

IX -- Malum in se

The effects of C.C. 2030, as mandated by C.C. 2033, as well as by C.C. 12, as ordered by the Supreme Court adjudication of December, 1995, preclude statutes relating to prescription that were adjudicated by District Court Judge Thaxton in Merits Trial Judgment filed and recorded prior to said Supreme Court's decision, -- the Appeal Court's adjudication, filed after the December '95 Supreme Court's decision! -- becoming RES JUDICATA!

Not only does C.C. Art. 2030 force the use of C.C. Art 2033, it is noted that C.C. Art. 7 (1987), derived from C.C. Arts. 7, 11, and 12 (1870), prevents (nulls) juridical acts derogating such laws, especially noting that C.C. Art 12 states that -- "Whatever is (done in contravention of a prohibitory law, is void, although the nullity be not formally directed."

Thus, C.C. Art. 7 (1987), through C.C. Art 12, voids all construction over this property, legally preventing any prescription because of a period of existence of said construction!

Tragically, the inconsistent judgment of the District Court was repeated by both the Appeal Court, and the Supreme Court! These judgments should be vacated - nulled - in order to prevent injury and further injustice, having impaired legal rights, and being inequitable and unconscionable. Such actions relate to ill practices, and are fraudulent!

District Court Judge Thaxton's judgment on the Petition for Summary Judgment was based upon C.C. Art. 2030, -- but he ignored C.C. Art. 2030, and its effects, noted in C.C. Art. 2033, in the Merits trial. Such effects of 2030 through 2033 are PRECLUSIVE! Appeal Court Judges have done the same!

Forcing use of erroneous law and erroneous fact relating to the following:

1. Ignorance of law?
2. Ignoring of law?
3. Ignoring of facts?
4. Abuse of discretion?
5. Refusal to take judicial notice?
6. Malum prohibitum?
7. Malum in se?

Appeal Court Judge Marvin has repeated these tragic errors! The December, 1995 mandate by the Supreme Court that C.C. Art. 2030 governs, -- demands use of C.C. Art. 2032, -- that such action does not prescribe, as well as use of C.C. Art. 2033 which mandates the return of the property in its prior physical state, or, if impracticable, payment of damages, to include fruits and revenues, in order to prevent unjust enrichment!

All of the above has been.ignored! -- with the use of illegal law!

The effects of C.C. 2030, as mandated by C.C. 2033, as well as by C.C. 12, as ordered by the Supreme Court adjudication ofDecember, 1995, preclude statutes relating to prescription that were adjudicated by District Court Judge Thaxton in Merits Trial Judgment filed and recorded <u>prior</u> to said Supreme Court's decision, with Appeal Court's Decision filed and recorded <u>after</u> said Supreme Court's Decision! --

making such RES JUDICATA! Not only does C.C. Art. 2030 force the use of C.C. Art 2033, it is noted that C.C. Art. 7 (1987), derived from C.C. Arts. 7, 11, and '12 (1870), prevent (null) juridical acts derogating such laws, especially noting that C.C. Art 12 states that -- "Whatever is done in contravention of a prohibitory law, is void, although the nullity be not formally directed." Thus, C.C. Art 7 (1987), through C.C. Art 12, voids all construction over this property, legally preventing any prescription because of a period of existence of said construction!

La. App. 1961. In event of error in judgment of court of record the remedy is by appeal as provided for by law; upon expiration of delay for appeal or affirmation on appeal, unsuccessful litigant may not thereafter attack final judgment for error but only for fraud and then only within one year. LSA-C.C.P. Art. 57 2004. Terrebonne v. Arabie, 132 So. 2nd 106.

La. 1945. A court may order the vacating of a judgment where a person having the required interest alleges and proves sufficient grounds therefore, the power in this respect being predicated upon substantial principles of right and wrong, and is to be exercised for the prevention of injury and the further injustice.

Termini v. McCormick, 23, So 2nd. La. 221.

La. App. 2 Cir. 1986. Judgment may be annulled where its enforcement would be unconscionable and inequitable and as impairment of one's legal right, even if no actual fraud or intentional wrongdoing is found. Bradford v. Thomas, 499 So. 2nd 525, writ denied 503 So. 2nd 480.

La. 1955. Rule that a final judgment rendered by a court of competent jurisdiction cannot be reversed, vacated or set aside save through appeal, has no application to a judgment that is absolutely null State ex rel. Griffin v. Stansberry, 83

So. 2nd 890, 228 La. 655.
La. App. 1978. If judgment is absolutely invalid, it may be annulled and cannot form a basis for res judicata. Willis v. Willis, 355 So. 2nd 999, writ denied 356 So. 2nd 1389.
La. App. 1975. While final judgment may have substantive effect of res judicata, it may nevertheless by subject procedurally to attack on ground of its nullity. LSA-C.C.P. Art. 2001; LSA-C.C. Art. 2286. Bowers v Jones-Journet, 316 So. 2nd 18.
La. App. 2 Cir. 1983. Once a final judgment has been rendered, it may only be nulled for vices of form, or where it has been obtained by fraud or ill practices. LSA-C.C. Art. 2006. Tarver v. Tarver, 441 So. 2nd 451; 445 So. 2nd 1232.
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La. 1983 Fraud or ill practices which justify the annulment of a final judgment occur when the circumstances under which the judgment was rendered show the deprivation of legal rights of the litigant who seeks relief and when the enforcement of the judgment would be unconscionable and inequitable. LSA. R.S. 9:2781; LSA-C.C.P. Art. 2004, 2004 comment. Kem Search, Inc. v. Sheffield, 434 So. 2nd 1067.
The annulment of a judgment is not limited to cases of actual fraud or intentional wrong doing, but is sufficiently broad to encompass all situations wherein a judgment is rendered through some! improper practice or procedure which operates, even innocently, to deprive the party cast in judgment of some legal right, and where the enforcement of the Judgment would be unconscionable and inequitable. LSA-R.S. 9:2781; LSA-C.C.P. Art. 2004, 2004 comment. Kem

Search, Inc. v. Sheffield, 434 So. 2nd 1067.

La. 1983. Under statute providing for annulment of judgment obtained by fraud or ill practices, each case must be considered from equitable viewpoint to ascertain whether it would be inequitable or unconscionable to allow judgment to stand, and two-step analysis is required: party seeking annulment must have been deprived of some legal right and resulting judgment must be unconscionable. LSA-C.C.P. Art. 2004. Stewart v. Goeb, 432 So. 2nd 246.

La. App. 1 Cir. 1986. A judgment obtained by fraud or ill practice is one where the circumstances under which it was rendered show a deprivation of the legal rights of the litigants seeking relief and enforcement of the judgment would be unconscionable and inequitable. LSA-C.C.P. Art. 2004. Alphonso v. Cement Product Services, Inc., 499 So. 2nd 305, writ denies 502 So. 2nd 112.

La. App. 2 Cir. 1983. Once a final judgment has been rendered, it may only be annulled for vices of form, or where it has been obtained by fraud or ill practices. LSA-C.C.P. Art. 2006. Tarver v. Tarver, 441 So. 2nd 451, writ denied 445 So. 2nd 1232.

La. App. 2 Cir. 1983. To establish that judgment has been obtained by "fraud or ill practices," within meaning of statute providing that a final judgment obtained by fraud or ill practices may be annulled, it must be shown that circumstances under which the judgment was rendered show the deprivation of legal rights of the litigant seeking relief and that enforcement of the judgment would be unconscionable and inequitable. LSA-C.C.P. Art. 2004. Gramm v. Brock, 430 So. 2nd 199.

La. App. 5 Cir. 1985. Statute providing for annulment of final judgments obtained by fraud or ill practices is not limited to cases of actual fraud or intentional wrongdoing, but is sufficiently broad to encompass all situations wherein judgment is rendered through some improper practice or

procedure which operates, even innocently, to deprive party cast in judgment of some legal right, and where enforcement of judgment would be unconscionable and inequitable. LSA. C.C.P. Art. 2004. Alker v. Martinez, 477 So. 2nd 855. Suit on cause of action which does not exist is"ill practice" within contemplation of statute permitting annulment of final judgments obtained by fraud or ill practices. LSA-C.C.P. Art. 2004. Alker v. Martinez, 477 So. 2nd 855.

La. App. 1973. Judgment may be annulled on ground of "ill. practices" even though no actual fraud or intentional wrong has been committed in procurement of judgment, if it is shown that enforcement of judgment would be unconscionable and inequitable and would deprive litigant who seeks annulment of legal rights to which he is entitled. LSA-C.C.P. Arts. 2002, 2004. Succession of Trouard, 281 So. 2nd 863.

La. App. 1969. Violation of state bar association canon of ethics, if proven, may nullify judgment obtained thereby as ill practice. Louisiana State Bar Association, Articles of Incorporation, art. 14, Secs. 22, 24, 25, 21A LSA-R.S. following 37:218; LSA-C.C.P. Art. 2004. Southern Discount Co. v. Williams, 226 So. 2nd 60.

La. App. 5 Cir. 1983. Legal test for determining whether or not judgment has been obtained by actionable fraud or ill practice and thus may be annulled is whether circumstances under which judgment was rendered showed deprivation of legal right of litigants seeking relief and enforcement of Judgment would have been unconscionable and inequitable. LSA-C.C.P. Art. 2004. Bush v. Lee, 443 So. 2nd 702, writ denied 446 So. 2nd 321.

La. App. 3 Cir. 1983. A petition seeking to annul judgment on ground of fraud or ill practices must clearly allege facts from which such elements may be unmistakably concluded in order to state a cause of action. LSA-C.C.P. Art. 856.

Perrodin v. Zander, 441 So. 2nd 120.
La. App. 4 Cir. 1985. Whether ill practice occurred to render a judgment a nullity is a fact issue which must be proved by evidence placed in the record. LSA-C.C.P. Art. 1201, 2001-2006. O'Neill v. Sumrall, 481 So. 2nd 157.
See comments under 11 - Denial of Due Process.
La. App. 2 Cir. 1986. Judgment may be annulled where its enforcement would be unconscionable and inequitable and as impairment of one's legal right, even if no actual fraud or intentional wrongdoing is found. Bradford v. Thomas, 499 So. 2nd 525, writ denied 503 So. 2nd 480.
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La. App. 5 Cir. 1985. "Statute providing for annulment of final judgments obtained by fraud or ill practices is not limited to cases of actual fraud or intentional wrongdoing, but is sufficiently broad to encompass all situations wherein judgment is rendered through some improper practice or procedure which operates, even innocently, to deprive party cast in judgment of some legal right, and where enforcement of judgment would be unconscionable and inequitable. LSA. C.C.P. Art. 2004. Alker v. Martinez, 477 So. 2nd 855. Suit on cause of action which does not exist is "ill practice"within contemplation of statute permitting annulment of final judgments obtained by fraud or ill practices. LSA-C.C.P. Art. 2004. Alker v. Martinez, 477 So. 2nd 855.

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La. App. 1969. Violation of state bar association canon of

ethics, if proven, may nullify judgment obtained thereby as ill practice, Louisiana State Bar Association, Articles of Incorporation, art. 14, Secs. 22, 24, 25, 21A LSA-R.S. following 37:218; LSA-C.C.P. Art. 2004. Southern Discount Co. v. Williams, 226 So. 2nd 60.

La. App. 5 Cir. 1983. Legal test for determining whether or not judgment has been obtained by actionable fraud or ill practice and thus may be annulled is whether circumstances under which judgment was rendered showed deprivation of legal right of litigants seeking relief and enforcement of Judgment would have been unconscionable and inequitable. LSA-C.C.P. Art. 2004. Bush v. Lee, 443 So. 2nd 702, writ denied 446 So. 2nd 321.

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La. App. 4 Cir. 1985. Whether ill practice occurred to render a judgment a nullity is a fact issue which must be proved by evidence placed in the record. LSA-C.C.P. Art. 1201, 2001-2006. O'Neill v. Sumrall, 481 So. 2nd 157.

See comments under 13 - Denial of Due Process.

SECTION NO. 18

GOOD FAITH

C.C. Art. 3481 -- GOOD FAITH

CC Art #3480 -- Good faith

For purposes of acquisitive prescription, a possessor is in good faith when he reasonably believes, in light of objective considerations, that he is owner of the thing he possesses. Acts 1982, No. 187, Sec 1.

With understanding of the frequent suits in 1952 and 1953 by the Highway Department attorneys, it becomes quite obvious that the 1953 servitude had to have been known to be.illegal at that Time, thus showing BAD FAITH!

CC Art #1759 -- Good faith

Good faith shall govern the conduct of the obligor and the obligee in whatever pertains to the obligation.

Any Judge who has studied this case, has seen many instances of overt bad faith, as noted in many Exhibits and Admissions!

Obviously, the prior Civil Code Arts prove bad faith, and all shall apply herein due to mandated JUDICIAL NOTICE!

CC Art #487 -- Possessor in good faith: definition

For purposes of accession, a possessor is in good faith when he possesses by virtue of an act translative of ownership and does not know of any defects in his ownership. He ceases to be in good faith when these defects are made known to him or an

action is instituted against him by the owner for the recovery of the thing. -- Act 1979, No. 180, Sec 1

Highway Department employees had to have known of the defect in the Servitude, as noted in exhibit AAA.

Highway Department employees ceased to be in good faith when such defect was made known in the 1985 suit, ongoing since 1985. This article #487 forces the judge to accept as fact that such Highway Department employees have acted in bad faith ab initio!

CC Art #3480 -- Good faith

For purposes of acquisitive prescription, a possessor is in good faith when he reasonably believes, in light of objective considerations, that he is owner of the thing he possesses. Acts 1982, No. 187, Sec 1.

With understanding of the frequent suits in 1952 and 1953 by the Highway Department attorneys, it becomes quite obvious that the 1953 servitude had to have been known to be illegal at that time, thus showing BAD FAITH!

SECTION NO. 19

QUASI ESTOPPEL

Definition -- The principle precluding a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken by him.
-- Includes "equitable estoppel" and embodies doctrine that one may not repudiate an act done or position assumed by him where such course would work injustice to another rightfully relying thereon.

The principle of QUASI ESTOPPEL precludes DOTD from asserting (to Plaintiff's disadvantage), a right inconsistent with the position previously taken by DOTD, -- namely, Since DOTD insisted that the Servitude was legal and binding, until nulled by the Supreme Court decision of December, 1995, -- therefore, DOTD is precluded from using any statute disallowed by the "legal and binding intent of the Servitude under color of law"! --
Therefore, no prescription can run!

Also, prescription does not apply to an absolute nullity -- C.C. Arts. 11,12.

22. GOOD FAITH

C.C. Art. 487, Acts 1979, No. 180 Sec. 1, effective 1 January 1980

Possessor in good faith; definition

> For purposes of accession, a possessor is in good faith when he possess by virtue of an act translative of owner-ship and does not know of any defects in his ownership. He ceases to be in good faith when these defects are made known to him or an action

is instituted against him by the owner for the recovery of the thing.

SECTION NO. 20

C.C. Art. 6 -- RETROACTIVITY OF LAWS

In the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary.

Comments

(c) According to a well-settled rule of statutory interpretation, procedural and interpretative laws apply both prospectively and retroactively unless t they violate vested rights or obligations of contracts.

Note -- 1975 Statute of one year prescrip tion is not retroactive, and cannot prevent payment of fruits and revenues from begin ning of roadbed use about 1954 until the new statute on prescription (St. Julien). Also, St. Julien cannot apply in this case!

SECTION NO. 21

PRECARIOUS POSSESSION

C. C. Art. 3556 -- General definition of terms

Precarious. -- That possession is called precarious, which one enjoys by the leave of another, and during his pleasure. The title which excludes the own ership, such as a lease, is also called precarious.

C. C. Art. 3437 -- Precarious possession

The exercise of possession over a thing with the permission of or on behalf of the owner or posses sor is precarious possession.

C. C. Art. 3438 -- Presumption of precariousness

A precarious possessor, such as a lessee or a depositary, is presumed to possess for another although he may intend to possess for himself.

C. C. Art. 3439 -- Termination of precarious possession

Aco-owner, or his universal successor, commences to possess for himself when he demonstrates this intent by overt and unambiguous acts sufficient to give notice to his co-owner. Any other precarious possessor, or his universal successor, commences to possess for himself when he gives actual notice of this intent to the person on whose behalf he is possessing.

C. C. Art. 3440 -- Protection of precarious possession

Where there is a disturbance of possession, the possessory action is available to a precarious possesor,

such as a lessee or a depositary, against anyone except the person for whom he possesses.

C. C. Art. 3477 -- Precarious possessor; inability to pre scribe Acquisitive prescription does not run in favor of a precarious possessor or his universal successor.

C. C. Art. 3478 -- Termination of precarious possession; commencement of prescription

A co-owner, or his universal successor, may commence to prescribe when he demonstrates by overt and unambiguous acts sufficient to give notice to his co-owner that he intends to possess the property for himself. The acquisition and recordation of a title from a person other than a co-owner thus may mark the commencement of prescription. Any other precarious possessor, or his universal successor, may commence to prescribe when he gives actual notice to the person on whose behalf he is possessing that he intends to possess for himself.

Louisiana Civil Law _____
Vol. 4, Partial Servitudes
Yiannopoulos 1997

CONVENTIONAL SERVITUDES
Section 139, Page 400. Precariousness

One who exercises possession over a thing on behalf of another or with the permission of the owner is a precarious possessor. Such a possessor may acquire neither ownership nor at servi tude by prescription.

Thus, one who uses servitude of passage by virtue of a lease granted to him by the owner of the dominant estate may not acquire by prescription the servitude of passage for himself;

Acts 1982
No 187
Section 1

Page 75 -- Article 3477. Precarious possession; inability to prescribe - Acquisitive prescription does not run in favor of a precarious possessor or his universal successor. Acts. 1982, No. 187, Sec. 1, eff. Jan. 1, 1983.

Revision comments - 1982

(a) This provision reproduces the substance of Article 3510 of the Louisiana Civil Code of 1870. It does not change the law.

(b) Acquisitive prescription does not run in favor of a precarious possessor. A precarious possessor is one who exercises "possession over a thing with the permission or on behalf of the owner or possessor." Article 3437, supra. A precarious possessor, such as a lessee or a depositary, "is presumed to possess for another although he may intend to possess for himself." Article 3438, supra.

(c) A lessee possesses for the lessor, and a deposi tary possesses for the depositor. A usufructuary possesses the usufruct for himself and the thing for the naked owner; however, and a person having a predial servitude possesses the servitude for him self and the land for the owner. See C. C. P. Art. 3656; Board of Commissioners v. S. D. Hunter Foundation, 354 So. 2nd 156 (La. 1978). A co-owner possesses his undivided share for himself and the immovable both for himself and for his co-owners.

SECTION NO. 22

ADVERSE POSSESSION -- 1 La. D 2nd -- 548
71 (2) -Prescription does not apply to an absolute nullity
(La.-Smith v. Taylor, 75 So. 2nd-850, 226 La. 235)

La. 1957. An absolutely null deed cannot form basis for conclusive prescription of 10 years by grantee named therein; but such grantee can convey to purchaser in good faith a title which can form basis for plea of acquisitive prescription. LSAC.C. Arts. 3478, 3479. Boudreaux v. Olin Industries, Inc., 94 So. 2nd 417, 232 La. 405.
C. C. 3478-79 -- Adverse Possession requires

1) Good faith

2) Title translative of property

3) Possession during time required by law

4) Object able to be acquired by prescription.

NOTA BENE:

1) Bad faith shown by exh. AAA.

2) Property title not translated, -- only a right of way servitude being sold, and not fee title.

3) Possession was only through this right of way servitude, felt to be legal by Plaintiff, although Defendant knew or should have known of its illegality (by Exh. AAA), -- yet legality was maintained under "color of

law" until discovery of apparent illegality by Plaintiff about 1982-1985, -- and proven illegal by Supreme Court decision, December, 1995!

4) Object unable to be prescribed
a) Valid right of way servitude under color of law until December 1995
b) Suit #2 after December, 1995, preventing one year prescription!
c) Adjudication based upon C. C. Art. 2030, which shall be finalized by C. C. Art. 2033!

This has yet to be done by Court action! -- which is denial of due process both procedural and substantive, abuse of discretion, malfeasance, etc!

C. C. Art. 3437 -- Precarious possession
Acts 1982, No. 187, Sec. 1 -- Title 23, 24, 25

Acquisitive prescription does not run in favor of a precarious possessor.

Revision comments - 1982

b) A precarious possessor is one who exercises "possession over a thing with the permission or on behalf of the owner or possessor".

c) -- a person having a predial servitude possesses the servitude for himself and the land for the owner that says a person having a predial servitude possesses the servitude for himself and the land for the owner.

SECTION NO. 23
GOOD FAITH

C.C. Art. 487, Acts 1979, No. 180 Sec. 1, effective 1 January 1980

Possessor in good faith; definition

> For purposes of accession, a possessor is in good faith when he possess by virtue of an act translative of ownership and does not know of any defects in his ownership. He ceases to be in good faith when these defects are made known to him or an action is instituted against him by the owner for the recovery of the thing.

SECTION NO. 24
CONCLUSION
PETITION TO VACATE AND FOR NULLITY

Chronology -

1953 --Servitude was purchased from Philip Lieber by Highway Department.
- -- Good faith on part of owner
- -- Bad faith on part of Highway Department (See Exh. AAA)
- -- Highway construction improved the pararoadbed property, according to Highway Department Counsel Bertrand, obviously true.

1955 --Highway Department permitted third party use, which was illegal, obviously making that portion used by third parties an excess taking! It should be noted that such pararoadbed property was used for

parking, sale of automobiles, sale of Christmas trees, etc, from curb to curb to curb, blocking any sight distance for which the Highway Department insisted such area was required.

Owner requested return of that property used by third parties, which was refused with the above notation. Thereafter, owner requested Highway Department to list the rights of said Highway Department, third parties, and owner, himself!

The Highway Department never answered!

1963 --Loss of pararoadbed property due to liberative prescription noted by Highway Department in 1989, with return of two-thirds of said pararoadbed property in 1989.

1966 --Highway Department refused Plaintiff's request to release that property used by third parties, again stating that it was needed for adequate sight distance.

1982 --Suit by Plaintiff was timed to prevent possible running of thirty year prescription.

1985 --Amended suit, after discovery of Servitude's illegality, as well as the excess taking.

1989 -- Quitclaim to plaintiff by Highway Department of only two-thirds of pararoadbed property.

1) In collusion with the City, holding the Kings Highway frontage for future highway widening!

2) Intra Departmental admission of liberative prescription which occurred in 1963, so that they quitclaimed back some of this property, but not all, in 1989!

1994 --District Court adjudication of Servitude's

ABSOLUTE NULLITY! (C. C. Art. 2030)

1) C. C. Art. 2032 -- Prescription of action -- action for absolute nullity does not prescribe.

2) C. C. Art. 2033 -- Effects -- Contract is deemed never to have existed! -- If unrestorable, -- damages are due, to include fruits and revenues, in order to prevent unjust enrichment.

3) C. C. Art. 12 -- Whatever is done in contravention of a prohibitory law (R. S. 48:312) is void!

4) C. E. Art. 202 -- Judicial Notice!

1995 --Appeal Court's agreeing with the District Court's adjudication of absolute nullity, through C. C. Art. 2030.

1995 --District Court's adjudication on damages

1 - Maintained that prescription had run on any possible claim by original owner or present owner.

2 - Maintained that Highway Department use of roadbed forced prescription of ownership of roadbed by Highway Department.

3 - Ignored plain meaning, syntax, and legislative intent of various statutes, as listed in the first few pages of this Brief

Following Judgment of Absolute Nullity, as per C. C. Art. 2030, Judge refused to use (ignored) the correct mandated statutes of 2032 and 2033, to allow return of property as it was before changes by the illegal servitude's acts, or to pay damages, including fruits and revenues, in order to avoid unjust enrichment!

Judge Thaxton used the wrong statutes, -- and even then he used them incorrectly, gravely erring in his misunderstanding of their plain meaning, syntax, and legislative intent!

Judge Thaxton used statutes that cannot apply to rights previously paid for by the Highway Department -- statutes that cannot apply to property taken but not damaged or expropriated, -- statutes that cannot apply to an illegal contract!

Note that the Appeal Court Adjudication (agreeing with the District Court) was recorded after the Supreme Court Adjudication of Nullity, which makes use of many laws RES JUDICATA (issues - claims preclusion), -- noting that C. C. 2030 forces use of C. C. 2033, -- which excludes any other statutes!

Finally, note that C.C. Art. 3477, regarding PRECARIOUS POSSESSION, has never been mentioned, and prevents prescription of any land herein by DOTD!

Judges must understand that Highway Department paid owner for right of way - Servitude contract for property improvements (roadbed construction).

This suit for damages relates to the refusal of the Highway Department to return use of pararoadbed property to owner after it continued to allow commercial use by third parties, making such used area an excess taking at that time, -- which is illegal, -- the Courts mandating all return of excess taking! Damages should include interest on pararoadbed property at its value established by Highway Department's allowing third-party commercial use, from Cirea 1955, until a portion of the excess taking was returned in 1989.

Damages should include fruits and revenues estimated on this property, as well as the roadbed property.

Then, Highway Department - DOTD should purchase use of this property.

N.B. - DOTD Counsel Bertrand has always insisted that the pararoadbed property's value was greatly enhanced by 1) removal of the levee, and 2) roadbed construction, -- which is quite true!

This was not a damage! -- This was an improve ment!

And, then, -- the Highway Department gave third parties the commercial use, -- repeatedly denying the owner such commercial advantages!

Obviously, the Decision by the Judges of the Supreme Court was not finalized by the District Appeal Court Judges, -- nor was the Appeal Court's Decision on Damages studied by the Supreme Court Judges!

Civil Code Art. 2033 was IGNORED by all Judges! -- A

fraudulent abuse of discretion, via misfeasance, malfeasance, and nonfeasance!

OUR JUDICIARY MUST APPLY LAW -- QUA LAW! OUR NAPOLEONIC CODE DEMANDS LAW APPLICATION, -- AND NOT WHIM APPLICATION (FOR WHATEVER MOTIVE CAUSING SUCH!)!

THE ATROCIOUS ABUSES OF DISCRETION BY OUR JUDICIARY HEREIN DEMAND A NULLITY JUDGMENT!

JUSTITIA! ---- AEQUITAS!

Respectfully submitted,

/s/ Samuel L. Lieber, M.D.
Samuel L. Lieber, M. D.
In Proper Person
Date: 17 Aug 1997

(3) Supreme Court, U.S.
FILED
JUL - 6 2000
OFFICE OF THE CLERK

No. 00-217

In the Supreme Court of the United States

SAMUEL L. LIEBER, M.D.
Plaintiff - Petitioner

vs.

CADDO LEVEE DISTRICT
BOARD OF COMMISSIONERS, ET AL.
Defendants - Respondents

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF LOUISIANA

APPENDIX VOLUME II
Appendix 2 thru 19

Samuel L. Lieber, M.D.
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98pp

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APPENDIX 2

Samuel L. Lieber	*	Number 290,553
Versus	*	First Judicial District Court
State of Louisiana, et al	*	Caddo Parish,Louisiana Section "C"

CONSOLIDATED WITH

Samuel L. Lieber	*	Number 420,225
Versus	*	First Judicial District Court
State of Louisiana, et al	*	Caddo Parish, Louisiana Section "C"

Written Findings of-Eact and Reasons For Judgment

This court has discovered a pleading filed by plaintiff on October 30, 1998, which was not provided to the court at the time it was filed. Based upon the certificate of service, a copy of the filing wag provided to opposing counsel. The pleading is styled "Second Supplemental Memorandum and Amended Petition In Support of Motion To Vacate Judgment On Defendant's Exception Of No Cause of Action To Plaintiff's Petition For Relative Nullity". The pleading purports to amend the plaintiff's original Petition for Nullity and to have this court answer a series of questions.

This court has treated this filing as the plaintiff's amendment to his Petition for Nullity (the merits of which are addressed in this court's ruling on defendant's Motion for Judgment on Pleadings and/or Motion for Summary Judgment), and as a request for written findings of fact and

reasons for judgment pursuant to Louisiana Code of Civil Procedure Article 1917.[1]

Listed below are the salient facts:

1) plaintiff's Petition for Nullity seeks to set aside the judgment of this court rendered in suit number 290,553, on November 22, 1995. That judgment was affirmed by the Second Circuit Court of Appeal, and became final following the denial of write and a request for rehearing by the Louisiana Supreme Court

2) that the petition for nullity does not allege vices of form as contemplated by Louisiana Code of Civil Procedure Article 2002;

3) that Louisiana Code of Civil Procedure Article 2003 is not applicable in this instance;

4) that the petition for nullity does not allege facts supporting fraud or ill practices as contemplated by Louisiana Code of Civil Procedure Article 2004, and;

---

[1] This court's ruling on the Exception of No Cause of Action was signed and filed on October 16, 1998. Article 1917 requires that any request for written findings of fact and reasons for judgment must be filed within ten days of the judgment. While the plaintiff is request is not timely in that regard, this court deems it appropriate to provide the relief requested.

5) there is no evidence that any facts alleged by plaintiff were not present in the record at the time this matter was considered by the appellate courts.

It is clear from the record presented, and particularly the extensive filings by plaintiff, that the plaintiff simply disagrees with the law as applied by the courts. While such a difference of opinion may be respected, it does not alter the proper application of Louisiana law.

Plaintiff's original and amended petitions for nullity fail to state a cause of action from which relief may be granted under Louisiana law. For this reason, the claims made by the Petition for Nullity were dismissed, with prejudice, at plaintiff's cost.

Dated in chambers on this 6th day of January, 1999.

/s/ Frank H. Thaxton, III
Frank H. Thaxton, III
District Judge

APPENIDIX 3

Judgment rendered December 8, 1999. Application for rehearing may be filed within the delay allowed by art. 2166. La. C.C.P.

No. 32,551-CA
(consolidated with)
No. 32,552-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

SAMUEL L. LIEBER Plaintiff-Appellant

Versus

CADDO LEVEE DISTRICT BOARD OF COMMISSIONERS, ET AL Defendants-Appellants

* * * * *

Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court Nos. 290,553 and 420,225

Honorable Frank H. Thaxton, III, Judge

* * * * *

SAMUEL L. LIEBER, M.D. In Proper Person

WIENER, WEISS & MADISON
By: Neil T. Erwin

BERTRAND & SOILEAU Counsel for Defendants-Appellees

* * * * *

Before BROWN, PEATROSS and DREW, JJ.

DREW, J.

Sam Lieber appeals a judgment dismissing his petition for nullity. We affirm.

FACTS

This litigation, which has been ongoing for over 17 years, involves a 2.09 acre tract of land owned by Lieber which is near the intersection of Youree Drive (Highway 1) and Kings Highway in Shreveport. In the early 1950's, DOTD, began a project extending Youree north from its intersection with Kings. In 1953, DOTI) entered into an agreement with appellant's father, Philip Lieber, who owned the tract at the time, for the transfer of a right-of-way over the 2.09 acre tract in exchange for $2,500. In 1966, Philip Lieber transferred his ownership interest in the tract to appellant.

PROCEDURALBACKGROUND

Suit No. 290,553

Lieber. as a pro se plaintiff, filed suit in 1982 for a declaratory judgment to determine ownership of the Youree tract and several other tracts of land. He amended his petition in 1985 to allege that the right-of-way agreement was invalid. Lieber eventually retained counsel who filed amended petitions between 1988 and 1991. The trial court ruled in 1994 that the 1953 right-of-way deed was null and void because DOTD, had been required in 1953 to take the property in fee simple. This court affirmed the judgment and remanded for trial on the issue of damages. *See Lieber v. Caddo Levee Dist. Bd. Of Com'rs*, 27,267 (La. App. 2d Cir

8/23195), 660 So. 2d 188, *writ denied*, 95-2355 (La. 12/8/95), 664 So. 2d 427.

DOTD filed exceptions of prescription and no right of action to Lieber's claim for damages. The trial court sustained the exception of prescription. This court amended the judgment to declare that DOTD) did not have a possessory interest in the portion of the tract not used in the construction and maintenance of the highway, and affirmed the judgment as amended. *See Lieber v. State, Dept. of Transp. and Development*. 28,745 (La. App. 2d Cir. 10/30/96), 682 So. 2d 1257, *writ denied*, 97-0087 (La. 3/7/97), 689 So. 2d 1374, reconsideration denied, 97-0087 (La. 4/18/97), 692 So. 2d 431. Lieber was represented by Neil Erwin on the two prior appeals.

Suit No. 420,225

On December 6, 1996, under civil docket #420,225, Neil Erwin filed on behalf of Lieber a petition for permanent injunction for return of property or, in the alternative, for damages. On August 29, 1997, Erwin filed a "First Amended Petition, With Additional Petition for Nullity Filed in Proper Person." Lieber filed his "petition" seeking to annul the judgment declaring that his claim for damages had prescribed. Upon DOTD's motion, the trial court ordered the consolidation of suit nos. 290,553 and 420,225. The trial court later granted Lieber's motion to sever the petition for nullity.

DOTD filed the exception of no cause of action on June 12, 1998. The trial court rendered judgment on June 29, 1998, sustaining the exception of no cause of action and allowing Lieber 15 days to amend his pleadings to state a

cause of action. The trial court vacated this judgment because Lieber maintained he did not receive notice of the filing of the exception or the setting of the exception for hearing. On October 16, 1998, the trial court again rendered judgment sustaining the exception of no cause of action and giving Lieber 15 days to amend his pleadings to state a cause of action.

On November 16, 1998, DOTD filed a motion for judgment on pleadings and/or summary judgment on the petition for nullity. On December 10, 1998, Lieber filed a motion for judgment on the pleadings and/or summary judgment on his petition for nullity.

Rendering judgment on January 6, 1999, the trial court granted DOTD's motion for judgment on the pleadings and/or motion for summary judgment because Lieber failed to amend his petition for nullity with any substantive facts which would state a cause of action.

Lieber bases his appeal on several grounds. First, he argues that the courts failed to address the implication of La. C.C. art. 2033, which he contends renders his damage claim imprescriptable. Second, Lieber maintains that he has discovered a "new legal basis" for his damages claim precarious possession under La. C.C. art. 3477. Lieber complains that the trial and appellate courts should have taken judicial notice of this article. Lieber states in his brief that the "failure of the previous courts to apply clear law constitutes a vice of substance and ill practice[.]" Third, Lieber contends that the use of La. R. S. 13:5 111 and 19:14 by this court in the second appeal "constitutes an ill practice" which was repeated by the denial of rehearing, the supreme court's refusal of his writ application and the trial court's refusal to

consider this argument. Finally, Lieber argues that the trial court failed to properly address La. C.C.P. art. 2005.

DISCUSSION

Application of La. CC. art. 2033

Lieber argues that the judgment should be annulled because this court failed to address the application of La. C.C. art. 2033 when affirming the judgment dismissing his claim for damages. Of course, by arguing that the judgment should be annulled because this court failed to consider Article 2033, Lieber is essentially arguing that Article 2033 favors him, and thus, this court was legally wrong in affirming the judgment.

A judgment cannot be annulled merely for being legally wrong. The correctness of the judgment must be questioned on appeal. *Goodson v. Sills*, 470 So. 2d 966 (La. App. Ist Cir.- .1985). See also *Hall v. Hall*, 611 So. 2d 173 (La. App. 5th Cir. 1992); *Wilson v. Central Gulf Lines, Inc.* 583 So. 2d 1164 (La. App. 4th Cir. 199 1), writ denied. 590 So. 2d 79 (La. 199 1). Lieber is prohibited from using a petition for nullity under La. C.C.P. art. 2004 as a second appeal of the judgment dismissing his prescribed claim for damages. Regarding La. C.C.P. art. 2004, our supreme court has stated:

> The action provided by this article is not a substitute for an appeal from a judgment that might be erroneous due to insufficiency of evidence or misinterpretation of substantive law, but, rather, is a separate remedy designed to afford relief against a judgment procured by methods viewed with disdain by the judiciary.

Smith v. Cajun Insulation, Inc., 392 So. 2d 398 (La. 1980). Lieber is obviously dissatisfied with the outcome of his previous appeal. However, he cannot now resort to a petition to annul as a vehicle to revisit issues previously presented to this court in the same litigation. Lieber is not entitled to continue retrying his case until he is satisfied with the outcome.

Newly Discovered Law

Lieber urges that the judgment should be annulled because he has discovered a civil code article which he believes is favorable to him, namely Article 3477. Lieber also accuses the courts of failing to take judicial notice of this article.

A party seeking annulment of a judgment must demonstrate how he was prevented or excused from asserting any defenses he may have had, i.e., that he was deprived of the knowledge of the existence of the defense relied on, or of the opportunity to prevent it, by some fraud or ill practice on the part of the other party. *Gramm v. Brock*. 430 So. 2d 199 (La. App. 2d Cir. 1983).

Lieber does not explain how he was prevented from asserting Article 3477 in the earlier action as a defense to prescription. We note that while Lieber filed as as a *pro se* appellant on this appeal, he had benefit of counsel during the prior appeal. We further note that his counsel. Neil Erwin. who filed the initial petition and the "First Amended Petition. With Additional Petition for Nullity Filed in Proper Person" in the second suit (#420,225), appeared on behalf of Lieber for oral argument on this appeal. Lieber is simply not entitled to retry his case each time he "discovers" law which

he feels may be favorable to him.

III Practices

Lieber insists that this court committed "ill practices" by relying on La. R.S. 13:5 111 and 19:14 as a basis for its resolution of the prior appeal. La. C.C.P. art. 2004 provides that a final judgment obtained by fraud or ill practices may be annulled. An "ill practice" is any improper practice or procedure which operates, even innocently, to deprive a litigant of some legal right. *Morehead v. Ford Motor Co.*, 30,207 (La. App. 2d Cir. 2/25/98), 709 So. 2d 861. A court's consideration of the law, even if done erroneously, can in no way be construed as an "ill practice." As we have stated earlier in this opinion, Lieber cannot utilize a petition to annul to again question this court's rationale in a previous appeal.

Application of La. C.C.P. art. 2005

Lieber argues that the trial court misapplied La. C.C.P. art. 2005, which provides, in part:

> A judgment affirmed, reversed, amended, or otherwise rendered by an appellate court may be annulled only when the ground for nullity did not appear in the record of appeal or was not considered by the appellate court.

Lieber apparently believes that Article 2005 offers *grounds* for annulment, as he states in his brief:

> Under Art. 2005, a judgment rendered by an appellate court may be annulled either when the ground

for nullity was not considered by the appellate court (applicable to La. C.C. art. 2033), or did not appear in the record (La. C.C. Art. 3477). Instead. the District Court, in its written reasons for judgment, both ignored Art. 2005 and erroneously stated that "There is no evidence that any facts alleged by plaintiff were not present in the record at the time this matter was considered by the appellate court." Under C.C.P . Art. 2005, the test is not limited to a basis for nullity finding of whether facts alleged as a basis for nullity were part of the previous court record (Which Dr. Lieber's arguments on precarious possession were not), but also whether the ground for nullity was not considered previously by the app ellate court. In the important instance of C.C. Art. 2033, while it specifically was pled by Dr. Lieber, there is no record that this statute ever was considered d by the prior appellate court, when its application would have reverse the erroneous finding on prescription by the prior court.

Article 2005 does not supply an independent ground, outside of La. C.C.P. arts. 2002 and 2004, to annul a judgment. Rather, it simply precludes annullment of a judgment when the ground for nullity appeared in the record of appeal or was considered by the trial court. Thus, Article 2005 simply governs when a judgment can be annulled if the action has already been disposed of on appeal, as in this matter.

DECREE

At appellant's cost, the judgment is AFFMMED.

APPENDIX 4

SUPREME COURT 3/20/2000
STATE OF LOUISIANA

DOCKET NUMBER 2000-C-561

SAMUEL L. LIEBER, M.D.
PLAINTIFF - APPELLANT

VERSUS

CADDO LEVEE DISTRICT BOARD OF COMMISSIONERS, ET. AL.
DEFENDANTS - APPELLEES

On Application for Write of Certiorari or Review to the
Louisiana Court of Appeal,
Second Circuit, No. 32,551-CA
(consolidated with No. 32,552-CA),
On Appeal from the First Judicial District Court,
Parish of Caddo,
Nos. 290,553 and 420,225
Frank H. Thaxton, III, Presiding

RNBUTTAL BY PLAINTIFF/APPLICANT TO OPPOSITION MEMORANDUM OF DEFENDANT/RESPONDENT STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION & DEVELOPMENT

RESPECTFULLY SUBMITTED,

SAMUEL L. LIEBER, M.D.
IN PROPER PERSON
325 GLEN ERICA
SHREVEPORT, LOUISIANA 71106

REBUTTAL BY PLAINTIFF/APPLICANT TO OPPOSITION MEMORANDUM OF

DEFENDANT/RESPONDENT STATE OF LOUISIANA,

DEPARTMENT OF TRANSPORTATION & DEVELOPMENT

MAY IT PLEASE THE COURT:

Plaintiff /Applicant, Samuel L. Lieber, M. D. , in proper person files this rebuttal to the opposition Memorandum of Defendant/Respondent State of Louisiana, Department of Transportation & Development (DOTD).

1. THIS WRIT--APPLICATION IS NOT FRIVOLOUS

DOTD wrongfully characterizes this writ application as "frivolous," without any foundation for this charge. As has been pointed out by Plaintiff/Applicant, his rights have been deprived in such a manner (such as the imposition of a St. Julien servitude by the Second Circuit Court of Appeal on its on and without any opportunity for the assertion of a defense by Plaintiff/Applicant) that a suit for nullity is the only avenue available to Plaintiff /Applicant. If this legal avenue is provided by statute, Plaintiff/Applicant is well within his rights to utilize it, since it represents the expression of the will of the citizens of this state expressed through their legislature.

2. FAILURE OF THE COURTS TO APPLY LAW (LA. C.C. ART. 2033) WHICH WOULD HAVE DISPOSED OF THE CASE IN A MANNER OPPOSITE TO THAT AS DECIDED FALLS WITHIN THE EXPANDED DEFINITION OF " ILL PRACTICE"

Plaintiff/Applicant has stated a cause of action for nullification under the expanded definition of an "ill practice" under the Louisiana Code of Civil Procedure:

> "The jurisprudence outlines two criteria for the determination that a judgment has been obtained through fraud or ill practices, namely (1) when the circumstances under which the judgment was rendered show the deprivation of the legal rights of the litigant who seeks relief, and (2) when the enforcement of the judgment would be unconscionable and inequitable."
>
> . . .
>
> "Each case must be viewed according to its own peculiar circumstances."
> Morehead v. Ford Motor Co., 709 So.2d 861, at 864 - 865 (La. App. 2 Cir. 1998)

Counsel for DOTD admits in his opposition Memorandum that: there is a "lack of direct reference to [La. C.C. Art. 20331 in the appellate opinion.,, (DOTD Opposition Memorandum, p. 5.)

How else, then, is Plaintiff/Applicant able to reverse the application of wrong law in this case except by filing this action for nullity? Failure to apply the right law (C.C. Art. 2033) is the same as the application of wrong law. Use of wrong law is the same as if Plaintiff /Applicant were to

apply the wrong medicine to one of his patients - the end result is the wrong result!

> "The law no longer requires that the alleged fraud or ill practice be on the part of the party in whose favor the judgment was rendered."
> Morehead v. Ford Motor Co., supra, at 864.

Previous courts ruled, as a matter of res judicata, that C. C. Art. 2032 applied, thereby both making the right of way over the property of Plaintiff /Applicant null (a point agreed to by DOTD through its counsel), and requiring the application of C. C. Art. 2033, which is not subject to prescription. However, C. C. Art. 2033 has been ignored by all courts, a point admitted by DOTD through its own pleadings.

Moreover, this law, which otherwise would have determined the case in a manner opposite to that as decided, comes directly within the definition of C.C.P. Art. 2005 in that it constitutes a ground for nullity that was not considered by the appellate Court.

For the same reason, Plaintiff/Applicant is able to raise the failure of the courts to apply C.C. Art. 3477, dealing with precarious possession, which neither was in the record of appeal nor considered by the appellate court.

3. WHILE THIS MAY BE THE THIRD "APPEAL" OF PORTIONS OF THIS CASE, IT IS THE FIRST OPPORTUNITY TO CORRECT THE MISSTATEMENT OF LAW BY THE APPELLATE COURT IN THE OPINION NOW UNDER APPEAL

A Petition for Nullity is not considered an "appeal, 11 and can be filed prior to any appeal or at any time thereafter. Therefore, while this is the third time that this Court has been asked to review portions of this case, this is the first appeal arising from Plaintiff/Applicant's permitted utilization of a suit for nullification.

La. C.C.P. Art. 2005 calls for an erroneous judgment rendered by an appellate court to be annulled when the ground for nullity either (A) did not appear in the record of appeal, or (B) was not considered by the Appellate court. However, this principle of law is misstated in the opinion of the Second Circuit Court of Appeal which is the subject of this writ application. Judge Drew writes:

> "it . . . [La. C.C.P. art. 20051 precludes annulment of a judgment when the ground for nullity appeared in the record of appeal or **was considered by the trial court**." (Emphasis added.)

This mistatement changes the meaning of the law entirely. The failure of the courts to apply La. C.C. Art. 2033 was raised, but, by DOTD's own Admission, there is no evidence that this pertinent law ever was considered by the appellate court. Therefore, C.C.P. art. 2005 must apply as the safeguard imposed by the legislature on appellate courts to correct errors just like this.

This misstatement of law Must be reversed through action by this Supreme Court, a point which DOTD does not even address in its Opposition.

4. THE IMPOSITION OF A ST. JULIEN SERVITUDE ON PLAINTIFF/APPLI CANT'S PROPERTY BY THE APPELLATE COURT VIO LATES DEFENDANT/APPELLANT'S OWN READING OF THE LAW

DOTD argues that Plaintiff/Applicant must show that he was prevented from asserting a defense in order to prevail in his action of nullity. While disagreeing with this limitation, Plaintiff /Applicant shows that the imposition of a St. Julien servitude on his property by the Second Circuit Court of Appeal comes squarely within this reading of the law. The reason is that the Second Circuit imposed the St. Julien servitude on its own volition after oral argument had been heard and the case submitted for decision.

Therefore, Plaintiff /Applicant was prevented from asserting his defense, namely, that under the facts of this case, a St. Julien servitude could not be applied because (A) such a servitude requires that no payment be made by DOTD, when one was here, and (B) a St. Julien servitude requires good faith and the evidence shows DOTD to be in bad faith. This defense could not be raised with the Trial Court - it was not an issue that was before the Trial Court.. Further, Plaintiff/Applicant was prevented from asserting this defense to the appellate court because the court never gave notice that it was an issue to be decided by that court until it was too late for argument. The appellate court compounded the error by denying Plaintiff/Applicant's motion for rehearing. Further, C.C. Art. 3477 prevents any prescription by a precarious possessor.

Courts have an obligation to apply correct law and to assign reasons for their decisions. Neither was done in this case as to the errors assigned. Accordingly, this Court must grant Plaintiff/Applicant's writ application to reverse the errors of law in this case.

Respectfully submitted,

/s/ Samuel L. Lieber, M.D.
Samuel L. Lieber, M.D.
In Proper Person

APPENDIX 5

The Supreme Court of the State of Louisiana

SAMUEL L. LIEBER, M.D.

vs. NO. 2000-C-0561

CADDO LEVEE DISTRICT BOARD OF COMISSIONERS, ET AL

IN RE: Lieber, Samuel L. M.D.; - Plaintiff; Applying for Writ of Certiorari and/or Review, Parish of Caddo, 1st Judicial District Court Div. E, Nos. 290,553, 420,225; to the Court of Appeal, Second Circuit, No(e). 32,552-CA, 32,551-CA

April 7, 2000

Denied.

CDT

PFC

WFM

HTL

CDK

BJJ

JTK

VICTORY, J., not on panel; recused.

Supreme Court of Louisiana
April 7, 2000
/s/ Rai T. Daigle
Deputy Clerk of Court
For the Court

APPENDIX 6

SAMUEL L. LIEBER	*	NUMBER: 290,553
VERSUS	*	1ST JUDICIAL DISTRICT
	*	COURT
CADDO LEVEE	*	CADDO PARISH,
DISTRICT BOARD	*	LOUISIANA
OF COMMISSIONERS,	*	
ET AL	*	

OPINION

In 1953, Philip Lieber conveyed a right-of-way deed to the Department of High ways now the Department of Transportation and Development, for the construction of a highway project 53-09-04 located at the intersection of Youree Drive and Kings Highway. In 1966, Philip Lieber conveyed the full ownership of the same property to Dr. Samuel Lieber, his son. Dr. Lieber later filed suit to determine the true title owner and holder of the property.

Before this court are both plaintiff Is and defendant's motions for partial summary judgment, in which each party asserts that the threshold issue to be resolved by this court is whether the state improperly acquired the property in question and whether this renders the right-of-way deed invalid.

The plaintiff argues that the 1953 right-of-way deed is an absolute nullity because the state violated La. R.S. 48:312, as effective in 1953, when it acquired a servitude on the property rather than acquiring the property in full ownership as required by the statute. In opposition, the defendant argues that La. R.S. 48:312 is inapplicable because the Kings Highway Project was not a limited access highway project and there was no indication, at the time of the filing of the plaintiff's original motion for partial summary

judgment, that the Kings Highway Project was a limited access one. Additionally, defendant contends that the applicable statute in this case is La. R.S. 48:217. This statute authorized the state to acquire a servitude, in addition to fee simple title, when acquiring property in connection with state highway projects. The apparent conflict between the two statutes must first be examined.

ISSUE I

The pertinent portion of La. R.S. 48:312, enacted in 1944, states:

> Section 5. ACQUISITION OF PROPERTY AND PROPERTY RIGHTS. For the purposes of this act, the Department of Highways of the State may acquire private or public property and property rights for limited-access facilities and service roads, including rights of access, air, view and light, by gift, devise, purchase or condemnation in the same manner as it is now or hereafter may be authorized by law to acquire such property or property rights in connection with highways and streets. All property rights acquired under the provisions of this act **shall be in fee simple**.

(Emphasis added.)

La. R.S. 48:217, enacted earlier in 1942, also states:

> The department may, without any competitive bidding, acquire, any immovable property, or the use thereof, **including servitudes**, lands, and improvements on lands, **necessary for the right of way of any highway included in the state highway system**

> or any appurtenance thereto or for any of the purposes of this Chapter by expropriation, by donation, by purchase, by exchange, or by lease.

(Emphasis added.)

Although Sec. 217 appears to be in direct conflict with Sec. 312 because it permits the acquisition of property in any manner necessary for construction of the highway, Sec. 312 was enacted in 1944, some two years after Sec. 217 was enacted. The Louisiana Supreme Court has held that "a subsequent general statute dealing specifically with a particular subject supersedes and repeals inconsistent and conflicting provisions in an earlier statute." Macon v. Costa, 437 So.2d 806 (La. 1983). Thus, Sec. 312, the later statute, supersedes and repeals the inconsistent language in Sec. 217.

ISSUE II

The Department contends in its motion in opposition that even if Sec. 312 is the applicable statute, there is no evidence or documentation that the highway project in question, No. 53-09-04, was a limited access highway as required by the statute. The Department further argues that the plaintiff Is reliance on State v. Bessie H. Barrow No. 115,708 (1st Jud. Dist. Ct. Nov. 20, 1953), is not sufficient evidence to substantiate the claim that the project referred to in the original right-of-way deed was a limited access highway and the same highway in the Barro case. Since the filing of the original briefs in this case, evidence has been adduced by the plaintiff to further support the claim that Project No. 53-09-04, referred to in the deed executed by Philip Lieber, was a limited access highway and the same project held to be a limited access highway in the Barrow

case.

First, the right-of-way deed executed by Philip Lieber conveying a servitude on the property to the state specifically refers to state highway project No. 53-09-04. The instrument states in pertinent part:

> BE IT KNOWN, THAT I, PHILIP LIEBER, husband of Mrs. Clara Lowenstein Lieber, of the age of majority and a resident of Caddo Parish, Louisiana, in consideration of the benefits, , uses and- advantages accruing to me by reason of the location of the STATE PROJECT 53-09-04, BROADMOOR-SHREVEPORT HIGHWAY, STATE ROUTE 20, CADDO PARISH, . . . do hereby grant, and deliver unto the state of Louisiana and the Department of Highways of the state of Louisiana, . . . a right of way on, over and across the following described property, to wit: [the Kings Highway Property].

(Emphasis added.)

Although the deed does not expressly state whether Project No. 5309-04 is a limited access highway, further evidence to support that claim can be found in the briefs and opinion filed in State v. Barrow, supra. In Barro , the Department of Highways sued on August 15, 1953 for full ownership of five parcels of land for the construction of the Youree Drive Extension Project. Similarly, the defendant owners of the property asserted that the plaintiff Department only needed a servitude for the construction of the highway and not full ownership.

In its petition filed in the Barrow case, the Department of Highways stated that it intended to construct in the city of Shreveport "a certain project known as State Project No. 53-09-04, which project is for the construction of the Broadmoor-Shreveport Highway. . . . and said Broadmoor-Shreveport Highway begins at the junction of Youree Drive with Kings Highway . . ." Additionally, in its original brief in the Barrow case, the Department further argued that [T]he proposed highway is a limited access facility because Mr. Bryan, [Assistant Road Design Engineer for the Department of Highways,] said it was, because the defendant failed to show it wasn't, because Exhibits P-6 through P-56 show that it is, and because the Legislature has said that a highway so designed is a limited access facility." See Plaintiff's Exhibit Nt p. 1-2. This statement in the Department's brief is followed by a footnote reference to Sec. 312, the same statute that is the subject of the instant litigation.

Furthermore the court held in the Barrow case that "the highway to be built over defendant's land (Noe 53-09-04] is defined to be a limited access road and, under Revised Statute 48:312, the Legislature required that all property rights acquired under the provisions of this part shall be in full-ownership." Larrow, supra I at 3. The Department's own admissions and the court's opinion make it clear that No. 53-09-04 was a limited access highway and, as such, the state was under an obligation to acquire full ownership of the property rather than a servitude.

Because the state failed to acquire the subject property in such a manner, and has produced no evidence to counter plaintiff's claims that the highway project in question was a limited access one, this court, pursuant to La.

C. C. Art. 2030, must find that the right-of-way deed executed by the parties is null and void as violating public order. "A valid contract must have a lawful cause. . . .The cause of an obligation is unlawful when it is in violation of the law or contra honos mores or against public order or public policy." Johnson v. Kilpatrick, 569 So.2d 669 (La. App. 2 Cir. 1990). The declared legislative, intent of Sec. 312 was to insure that property for the purpose of a limited access highway was to be acquired in fee simple. To allow the state to do anything less, even some forty years later, would be in contravention of the stated legislative intent.

For the foregoing reasons, the plaintiff's motion for partial summary judgment on the issue of ownership is GRANTED and the defendant's motion is DENIED. The remaining issue to be resolved by the court is the extent to which the property in question has been damaged or taken by the actions of the state and whether the owner is entitled to compensation, and in what amount, for such loss.

Dated in chambers on this 30th day of March, 1994.

/s/ Frank H. Thaxton, III
FRANK H. THAXTON, III
DISTRICT JUDGE

APPENDIX 7

Judgment rendered August 23, 1995
Application for rehearing may be
filed within the delay allowed by
Art. 2166, LSA-CCP.

No. 27,267-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

SAMUEL L. LIEBER — Plaintiff-Appellee

versus

CADDO LEVEE DISTRICT BOARD OF COMMISSIONERS, ET AL — Defendant-Appellant

* * * * *

Appealed from the First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 290,553

Honorable Frank H. Thaxton, Judge

* * * * *

BERTRAND & SOILEAU
BY: Ronald J. Bertrand — Counsel for Appellant, State of Louisiana, Department of Transportation and Development

WIENER, WEISS, MADISON & HOWELL
BY: Neil T. Erwin — Counsel for Appellee, Dr. Samuel L. Lieber

* * * * *

Before MARVIN, NORRIS, and LINDSAY, JJ.

LINDSAY, Judge

The State, through the Department of Transportation and Development (DOTD), appeals a trial court judgment holding that a 1953 right-of-way deed, obtained for a limited-access highway project, was null and void because the Department of Highways was then statutorily required to take the property in fee simple, instead of merely obtaining a servitude. For the reasons assigned below, we affirm.

FACTS

In 1953, a state project in Shreveport was undertaken to extend Youree Drive about two miles north from its intersection with Kings Highway. Phillip Lieber owned a 2.09-acre tract of land near the intersection of Youree and Kings which was used as a levee.[1] As part of the extension project, the levee was eventually moved from this tract and relocated on the east side of the newly extended Youree Drive.

On May 21, 1953, Mr. Lieber and the Louisiana Department of Highways (the predecessor of the DOTD) entered into a right-of-way agreement, whereby Mr. Lieber transferred a right of way over the entire tract in exchange for $2,500.00. The document showed that only a servitude was granted and that there was no conveyance of fee title.

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[1] In brief, the DOTD acquiesced, for purposed of te cross-motions for partial summary judgment, that the 2.09 acre-tract was necessary for use by the state in construction of a limited-access highway.

In 1955, Mr. Lieber began trying to get the DOTD to relinquish the servitude over the portion of the tract not actually used in construction of the roadway. In particular, he wished to be able to use the portion of his property which the state alowed others to use for such enterprises as annual Christmas tree sales. His efforts were unsuccessful. In 1966, he conveyed his full ownership interest in the property to his son, Dr. Samuel Lieber, the present plaintiff. In 1982, Dr. Lieber filed the instant suit. Among the defendants was the DOTD.

In 1990, the plaintiff filed a motion for partial surnmary Judgment, seeking a declaration that the right-of-way deed was invalid and null. The motion was denied. In 1993, he re-asserted the motion. At that time, the DOTD also filed a motion for partial summary judgment, requesting that the document be declared valid.

In April of 1994, the trial court rendered a written opinion in which it ruled that the right-of-way deed was null and void, The trial court found that former LSA-R.S. 48:312, as enacted in 1944, required that all property rights acquired by the DOTD, for limited-access facilities and service roads "shall be in fee simple." Furthermore, the trial court ruled that this statute superseded and repealed inconsistent language in LSA-R.S. 48:217 (enacted in 1942), which allowed the state to acquire any im movable property or the use thereof, including servitudes, for the right of way in any state highway system by expropriation, donation, purchase, exchange or lease. In so ruling, the trial court relied upon the position taken by the Department of Highways in *State Through Dept. of Highways v. Barrow*, 238 La. 887, 116 So.2d 703 (1959), which dealt with another tract involved in the same highway project. In its

trial court pleadings in the *Barrow* case, the Department had contended that it was **required** under LSA-R.S. 48:312 to take the property of an uncooperative landowner in full ownership, rather than obtain a servitude or right of way.

Therefore, the plaintiffs motion for partial summary judgment was granted, and the DOTD's motion for partial summary judgment was denied.

The DOTD filed a Writ application, which was converted into an appeal. The narrow issue presented for review in this appeal is whether the Department of Highways was authorized to take a servitude for a limited access highway in 1953.

STATUTES

LSA-R.S. 48:217 was added by Acts 1942, No. 4, Section 47. It provided, in pertinent part:

> The Department of Highways shall have the power and authority, without any competitive bidding, to acquire any and all immovable property, or the use thereof, including servitudes, lands, and improvements on lands, necessary for the right of way of any highway included in the State highway system or any appurtenance thereto or for any of the purposes of this Act, either by expropriation, as herein provided, by donation, by purchase, by exchange, or by lease. [Emphasis added.] [2]

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[2] Although subsequently amended on several occasions, LSA-R.S. 48:217 still contains essentially the same language as quoted.

Former LSA-R.S. 48:312, pertaining to limited-access highways, was added by Acts 1944, No.67, Section 5. Its relevant provisions stated:

> For the purposes of this act, the Department of Highways of the State may acquire private or public property and property rights for limited access facilities and service roads, including rights of access, air, view and light, by gift, devise, purchase, or condemnation in the same manner as it is now or hereafter may be authorized by law to acquire such property or property rights in connection with highways and streets. All property rights acquired under the provisions of this act shall be in fee simple .... [Emphasis added.] [3]

For purposes of our discussion, Acts 1944, No.67 contained two other noteworthy provisions, which provided in pertinent part:

> Section 3. AUTHORITY TO ESTABLISH LIMITED-ACCESS FACILITIES. The Department of Highways of the State is hereby authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain and provide limited-access facilities for public use wherever such authority is of the opinion that traffic conditions, present or future, will Justify such special facilities: Provided, That within cities and villages such authority shall be subject to such municipal consent as may be provided by law. **Said Department of Highways, in addition to the specific powers granted in this act, shall also have**

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3 This statute was repealed by Acts 1955, No. 129. That act added LSA-R.S. 48:303, which allows highway authorities to "acquire any use of the property or the full ownership of it" for controlled-access facilities; this statute will be discussed further, *infra.*

> **and may exercise, relative to limited-access facilities, any and all additional authority now or hereafter vested in it relative to highways or streets within its jurisdiction.** Said Department may regulate, restrict, or prohibit the use of such limited-access facilities by the various classes of vehicles or traffic in a manner consistent with Section 2 of this act. [Emphasis added.] [4]
>
> * * *
>
> Section 12. SEVERABILITY .... All laws or portions of laws inconsistent with the policy and provisions of this act are hereby repealed to the extent of such inconsistency in its application to limited-access facilities provided for in this act. [Emphasis added.]

Neither LSA-R.S. 48:217 nor LSA-R.S. 48:312 was amended before 1953, when the Department of Highways obtained the servitude on the Lieber property.

STATUTORY CONSTRUCTION

LSA-C.C. Art. 13 provides that "[l]aws on the same subject matter must be interpreted in reference to each other." When dealing with conflicting statutes on the same subject matter, this article makes it the court's duty to harmonize and reconcile the acts if possible, *State in Interest of A.C.*, 93-1125 (La. 1/27/94), 643 So.2d 719.

Rules of statutory construction provide that where

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4 This section eventually became part of LSA-R.S. 48:301. No case has construed the relevant, highlighted language.

two statutes deal with the same subject matter, they should be harmonized if possible. However, if there is a conflict, the statute specifically directed to the matter at issue must prevail as an exception to the statute more general in character. *Delta Development Company, Inc. v. Plaquemines Parish Commission Council*, 451 So.2d 134, 138 (La. App. 4 th Cir. 1984), writ denied, 456 So.2d 172 (La. 1984); *State ex rel. Bickman v. Dees,* 367 So.2d 2-83, 291 (La. 1978).

Where the later special statute is riot irreconcilable with the general statute to the degree that both statutes cannot have a coincident operation, the general statute will not be repealed; the special statute will exist as an exception to its terms. *Macon v. Costa*, 437 So.2d 806, 813 n. 14 (La. 1983). Furthermore, laws are presumed to be passed with deliberation and with full knowledge of all existing laws on the same subject. *Winston v. Orleans Parish School Board,* 545 So.2d 1174 (La. App. 4th Cir. 1989), writ denied, 550 So.2d 631 (La. 1989).

The court in *Hayden v. Rich and Parish School Board,* 554 So.2d 164, 167 (La. App. 2d Cir. 1989), writ denuied, 559 Sr.).2d 124 (La. 1990), discussed statutory construction as follows:

> The construction of a particular statute which creates a statutory inconsistency should be avoided when an interpretation can be adopted which will not do violence to the plain words of an act. The legislature is presumed to have enacted each statute with deliberation and with full knowledge of all existmig laws on the same subject. The meaning and intent of the statutory provision, therefore, is to be determined by a consideration of the statute in its entirety and all

other laws on the same subject matter and a construction should be placed on the provision in question which is consistent vith the express terms of the statute and with the obvious intent of the legislature in enacting it. It is reasonable to conclude therefore that the legislature, in passing a statute, did not intend to abrogate any prior or law relating to the same subject matter unless the repugnancy betw een the two is irreconcilable. Prior laws are repealed by subsequent lavs only in the case of positive enactment or clear repugnancy and nothing short of irreconcilable conflict between two statutes works a repeal by implication.

DISCUSSION

The DOTD argues that the trial court erred in finding that the right-of-way deed was invalid. It argues that LSA-R.S. 48:312 was only one method by which it was entitled to take property for a luighway project and that it was equally acceptable for the DOTI) to obtain only a servitude instead of full ownership. In support of its argument, the DOTD refers to the wording of Acts 1944, No.67, Section 3, specifically the following: "Said Department of Highways, in addition to the specific powers granted in this act, shall also have and may exercise, relative to limited-access facilities, any and all additional authority now or hereafter vested in it relative to highways or streets within its Jurisdiction."

However, the plaintiff contends that Section 3 of the Act only pertained to the authority to "plan, designate, establish, regulate, vacate, alter, improve, maintain and provide" limited-access highways, not to the acquisition of property rights for such highways, which was discussed in

Section 5. He also relies upon Section 12 of Acts 1944, No.67, quoted supra, pertaining to the repeal of inconsistent laws.

We agree with the plaintiff and hold that I he trial court properly found that LSA-R.S. 48:312, a special statute address ing limited-access highways, superseded LSA-R.S. 48:217, the general highway statute, and implicitly repealed its conflicting provisions insofar as they concerned limited-access highways. We are unable to harmonize the two provisions; to read them together essentially eliminates the mandate in LSA-R.S. 48:312 that "[a]ll property rights acquired under the provisions of this act **shall** be in fee simple." Section 3 of Acts 1944, No. 67 did not pertain to the acquisition of the property rights, which was fully covered in Section 5. Therefore, we find that the trial court was correct in finding that the DOTD lacked authority to acquire the servitude or right of way on the Lieber property.

RETROACTIVITY[5]

The DOTD also argues that LSA-R.S. 48:303, which was added in 1955 by the same act that repealed LSA-R.S. 48:312, should be given retroactive effect. As mentioned previously (see FN 3, supra), this statute changed the law pertaining to the acquisition of property rights for limited-access highways to allow highway authonities to "acquire

[5] The plaintiff argues that the retroactivity of LSA-R.S. 48:303 should not be addressed by this court because the DOTD did not present the issue before the trial court. While we acknowledge that the issue was only marginally presented in the trial court, and the trial court did not specifically address the matter in its written opinion or judgment, we consider the DOTD's argument in the interest of justice.

any use of the property or the full ownership of it." Thus, the law pertaining to limited access highways was modified to conform with the general provisions of LSA-R.S. 48:217.

LSA-R.S. 1:2 provides that "[n]o Section of the Revised Statutes is retroactive unless it is expressly so stated." LSA-R.S. 1:2 is generally construed as being co-extensive with LSA-C.C. Art. 6, which provides that absent legislative expression, procedural and interpretive laws apply both prospectively and retroactively, while substantive laws apply prospectively only. Stelly v. *Overhead Door Company of Baton Rouge*, 94-0569 (La. 12/8/94), 646 So.2d 905; *Rousselle v. Plaquemines Parish School Board,* 93-1916 (La. 2/28/94), 633 So.2d 1235.

A two-fold inquiry is required by LSA-C.C. Art. 6. First, it must be ascertained whether the enactment expresses legislative intent regarding retrospective or prospective application. If such intent is expressed, the inquiry ends. If no such intent is expressed, the enactment must be classified as either substantive, procedural or interpretive. *St. Paul Fire & Marine Insurance Company v. Smith,* 609 So.2d 809 (La. 1992); *Cole v. Celotex Corporation*, 599 So.2d 1058 (La. 1992); *Rousselle v. Plaquemines Parish School Bd, supra.*

"Substantive" laws either establish new rules, rights, and duties or change existing ones. *St. Paul Fire & Marine Insurance Company v. Smith*, 609 So.2d at 817; *Perfect Equipment Corporation v. Louisiana Recycling, Inc.*, 26,986 (La. App. 2d Cir. 5/10/95), 655 So.2d 698. "Procedural" laws describe the method of enforcing, processing, administering or determining rights, liabilities or status. *Rollette v. State Farm Mutual Automobile insurance Company*, 619

So.2d 832, 835 (La. App. I st Cir. 1993); *State, Department of Transportation and Development v. Hellenic, Inc.*, 93-0870 (La. App. Ist Cir. 4/8/94), 636 So.2d 1004. If a statute merely prescribes the method of enforcing a right which previously existed or maintaining redress for invasion of rights, it is classified as procedural; whereas, if it creates a new obligation or night where none previously existed, it is substantive. *River Cities Construction Company, Inc. v. Barnard & Burk, Inc.*, 444 So.2d 1260 (La. App. Ist Cir. 1983), writs denied, 446 So.2d 1223, 1226 (La. 1984); *Rollette v. State Farm Mutual Automobile Insurance Company, supra.* "Interpretive" laws, on the other hand, do not create new rules, but merely establish the meaning that the 'interpreted statute had from the time of its enactment. *Segura v. Frank,* 93-1271 (La. 1/14/94), 630 So.2d 714. It is the original statute, not the interpretive one, that establishes the rights and duties. *St. Paul Fire & Marine Insurance Company v. Smith, supra*: *Prejean v. Dixie Lloyds Insurance Co.*, 94-2979 (La. 5/22/95), 655 So.2d 303; *Perfect Equipment Corporation v. Louisiana Recycling, Inc., supra.*

In the present case, the legislative act establishing LSA-R.S. 48:303 gave no indication that the legislature intended it to be retroactive. Consequently, we must classify the statute as either substantive, procedural or interpretive. It is plainly not interpretive, as the prior statute did not permit the Department of Highways to take a servitude when acquiring property for a limited-access highway. Nor can the statute be classified as procedural since it goes beyond affecting a mere "method" by which the Department of Highways could preceed. LSA-R.S. 48:303 is a substantive law which altered the rights and obligations of the Department of highways, which was previously

mandated to take property for a limited-access highway in full ownership.

Therefore, we find that LSA-R.S. 48:303 is not to be applied retroactively.

NULLITY

The trial court declared the right-of-way deed null and void on the basis of LSA-C.C. Art. 2030, which declares a contract absolutely null when it violates a rule of public order and provides that such a contract cannot be confirmed. The DOTD argues that, since LSA-C.C. Art. 2030 did not exist 1953 when the contract was executed, the trial court erred in applying it to the instant case.

LSA-C.C. Art. 2030 in its present form was added as part of the 1984 Obligations Revision. The Revision Comment to the article specifies that while it was new, it did not change the law and codified the jurisprudential rule that a contract contravening public order is absolutely null. Courts have interpreted the prohibition against contracts "contrary to public order" as including a violation of a state statute. *Wynne v. New Orleans Clerks and Checkers Union, Local 1497, International Longshoremen's Association, AFL-CIO,* 550 So.2d 1352 (La. App. 4th Cir. 1989), writ denied, 558 So-2d 1125 (La. 1990). Furthermore, according to LSA-C.C. Art. 2032, an action for annulment of an absolutely null contract does not prescribe.

Therefore, we find no error on the part of the trial court in declaring the contract null and void. See Johnson v. Kilpatrick, 569 So.2d 669 (La. App. 2d CIT. 1990).

CONCLUSION

For the reasons expressed above, the judgment of the trial court is affirmed. The case is remanded to the trial court for further proceedings. To the extent permitted by law, costs are assessed against the appellant, the DOTD.

AFFIRMED.

APPENDIX 8

The Supreme Court of the State of Louisiana

SAMUEL L. LIEBER

VS. NO. 95-C - 2355

CADDO LEVEE DISTRICT BOARD
OF COMMISSIONERS, ET AL

IN RE: Caddo Levee Dist Bd Comm,; State of Louisiana; Department of Trans & Develop.; - Defendant(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Second Circuit, Number 27267-CA; Parish of Caddo First Judicial District Court Div."E"' Number 290,553

December 8, 1995

Denied.

WFM
HTL
CDK
BJJ

WATSON, J. would grant the writ.
VICTORY, J. recused.

Supreme Court of Louisiana
December 8, 1995

/s/ illegible
Clerk of Court
For the Court

APPENDIX 9

Samuel L. Lieber	*	Number 290,553
Versus	*	First Judicial District
	*	Court
Caddo Levee District Board	*	Caddo Parish, Louisiana
of Commissioners, et al	*	Section "C"

OPINION

Background of the Case:

The plaintiff in this case has filed suit seeking damages resulting from the "taking" of certain property by the State of Louisiana for use in a highway construction project. The property involved is located in the city limits of Shreveport at the intersection of Louisiana Highway 1 (also known as "Youree Drive") and Kings Highway.

The "taking" occurred on May 21, 1953. On that date, the plaintiff's father, Philip Lieber, executed a "right of way" in favor of the State for purposes of highway construction. (See Exhibit B) This court has previously held, and the Second Circuit Court of Appeal has affirmed, that the "taking" by this means was null in that it did not result in the acquisition by the State of the property in full ownership as required by the then applicable law.

On August 17, 1982, Dr. Lieber filed this suit seeking the value of the property taken and utilized in the project, recovery of the property not utilized in the project, and for damages. He alleges that the "excessive taking" of the property was unlawful and constitutes "inverse condemnation". Additionally, plaintiff contends that because the State treated him differently than other landowners, he perceives as similarly situated, there has been a constitutional

denial of equal protection.

This case was presented to the court on three issues: (1) the defendant's exception of prescription; (2) the defendant's exception of no right of action; and (3) the amount of damages to be awarded in favor of plaintiff. Both exceptions were referred to the trial on the merits.

The trial began on September 27, 1995 and was completed on September 28, 1995. The case was held open for the filing of briefs, with all filings having been made by November 20, 1995. The case was submitted for decision on November 21, 1995.

FINDINGS OF FACT

Prior to 1953, Youree Drive extended from Southfield Road north to Kings Highway, where it ended. On the north side of Kings Highway, was the property owned by Philip Lieber. It included property burdened by a levee, as well as property on either side.

During 1953, the State began acquiring property for the extension of Louisiana Highway 1 ("Three Drive) north of Kings Highway. On May 21, 1953, Philip Lieber executed a right of way in favor of the State for that purpose. Construction of the highway project began on February 1, 1954, and the project was completed on December 22, 1954.

Once the highway project was completed, it was apparent to Philip Lieber that the project had not utilized all of the property described in the right of way. Philip Lieber, through his attorney, requested on July 14, 1955 that the State return that portion of the property not utilized by the

project. (See Exhibit X) In its reply letter, acknowledged by Philip Lieber's attorney on July 20, 1955, the State refused his request.(See Exhibit Y)

On April 6, 1966, Dr. Samuel Lieber, the plaintiff in these proceedings, acquired the subject property from his father. (See Exhibit D-6) On April 19, 1966, Dr. Lieber likewise requested through his attorney, that the property not utilized in the project be returned. (See Exhibit ii) In a letter to Dr. Lieber dated April 25, 1966, the State effectively refused this request. (See Exhibit KK).

On August 17, 1982, Dr. Lieber filed this suit. On December 13, 1989, the State executed a quitclaim deed in favor of Dr. Lieber, remitting a portion of the property not utilized in the highway construction project , (See Exhibit I) It is suggested that the State did so based upon its opinion that ownership of the property not utilized in the highway construction project had been lost by liberative prescription.

APPLICABLE LAW OF PRESCRIPTION

This court believes that the applicable prescriptive period for the facts presented in this case is found in LRS 13:5111[1], which provides in pertinent part, as follows:

---

[1] LRS 19:14 provides for the prescriptive period of two years as found in LRS 19:2.1, where the property has been taken with the consent or acquiescence of the owner. While the argument can be made that this prescriptive period is applicable to the facts presented, application of even the more liberal three year prescriptive period resolves the exception.

> "...Actions for compensation for property taken by the state, a parish, municipality, or other political subdivision or any one of their respective agencies shall prescribe three years form the date of such taking..."

This statute provides that the prescriptive period begins from the date of the "taking". The State argues that the taking occurred at the time the right of way was granted by Philip Lieber in 1953, or at the very latest, at the time the construction was begun in 1954. Dr. Lieber argues that the prescriptive period does not begin to run until the landowner becomes "aware" of the taking. And because he did not know there was an "illegal taking" until 1982 or 1985, Dr. Lieber argues that prescription did not begin to run until that time.

This court must determine when the "taking" occurred in order to determine when prescription began to toll. The significant dates for purposes of considering when the "taking" occurred, are these:

May 21, 1953	Right of Way executed
February 1, 1954	Construction Began
December 22, 1954	Construction Completed
July 14, 1955	Letter from Philip Lieber to State requesting property
July 20, 1955	Acknowledgement of State's rejection of Philip Lieber's request
April 19, 1966	Letter from Dr. Lieber to State requesting property
April 25, 1966	Letter from State to Dr. Lieber refusing request

August 17, 1982 Suit filed by Dr. Lieber

The jurisprudence relied upon by this court indicates that prescription begins to run "from the date of the discovery of the taking". **Howard v. Louisiana Power and Light,** 583 So.2d 503 (La.App. 5 Cir. 1991); **Jungeblut v. Parish of Jefferson,** 485 So-2d 974 (La.App 5 Cir. 1986); **Guin v. State Department of Transportation and Development,** 391 So.2d 1367 (La.App. 4 Cir. 1980) writ denied 397 So.2d 1361 (La.1980). In determining when the plaintiff in this case learned of the loss of property upon which the claims in this suit are based, this court has compared the factual scenarios in the following cases.

In **Howard**, supra, the unimproved property owned by the plaintiffs had been assessed for property tax purposes at $68.00 per year for fourteen years. In the fifteenth year, 1978, the plaintiffs received a tax notice for $33,000.00. Completely unaware that any improvements had been made to the property, the plaintiffs retained a surveyor. The surveyor reported his findings in January of 1979, which revealed that the defendant had placed certain structures on the property in 1975, and in preceding years. Suit was giled in March, 1979. In rejecting the defendant's exception of prescription, the Fifth Circuit Court of Appeal found that the plaintiff **actually discovered** the taking only after receiving the tax notice. Because suit was filed within three years of that date, the claim was timely filed.

In **Rivet V. State of Louisiana,** 63S So.2d 295 (La.App. 5 Cir. 1994), the plaintiff owned a lot adjacent to a highway. By letter dated February 3, 1984, the State advised the Corps of Engineers that because of proposed highway construction, there would no access from the adja-

cent lots to the highway. The plaintiff had no notice of this letter. On May 7, 1985, the plaintiff made a request of the State for a driveway permit to his lot. By letter dated July 8, 1985, the State denied that request. On October 9, 1987, plaintiff filed suit. In support of its exception of prescription, the State argued that the "taking" occurred when it notified the Corps of Engineers on February 3, 1984, more than three years prior to the filing by the plaintiff. The Fifth Circuit Court of Appeal, in denying the exception, found that the plaintiff had not "discovered the taking" until receipt of the State's letter on July 8, 1985, within the three year prescriptive period.

In **Powell v. Department of Highways**, 383 So.2d 425 (La.App. 4 Cir. 1980) the plaintiff transferred a portion of his unimproved property to the State in 1959. In 1971, twelve years later, the State fenced a portion of the plaintiff's property 25 feet past the boundary described in the deed. In March of 1976, the plaintiff had the property surveyed and discovered the encroachment. The Fourth Circuit Court of Appeal found that the "discovery of the taking" occurred when the survey was made, and that because suit was filed within three years of that date, the claim was timely.

In the instant case, Philip Lieber retained an attorney in 1955 to make demand on the State for the return of the property not utilized by the construction project. Once his request was denied, he took no legal action to enforce his claim or seek damages for any loss. Dr. Lieber made a similar request in 1966. once his request was denied, he took no legal, action to enforce his claim or seek damages until August 17, 1982, some 16 years later.

In this case, Philip Lieber discovered the "taking" which gives rise to this suit, at the time of the completion of the highway construction project in 1954. Even assuming that Dr. Lieber has a separate claim for damages unaffected by the failure of Philip Lieber to pursue any claim against the State, Dr. Lieber clearly knew by 1966 at the very latest, of the "taking" and the State's refusal to return the property or compensate the plaintiff in any manner. There was no legal action taken within the three years following even this latest "discovery".

There is no question from the facts presented and the applicable law, that the "taking" of the property occurred more than three years prior to the filing of suit in this matter. The plaintiff's failure to pursue the claim based upon the representations made by the State or the plaintiff's lack of knowledge of the law, do not interrupt the tolling of prescription.

Likewise, the final two arguments made by Dr. Lieber are insufficient to defeat the exception of prescription. Based upon the facts presented, there is no evidence of any action by the State which would invoke the applicability of the doctrine of contra non valentem. And simply because the State has taken a contrary legal position in an unrelated case, there is no legal authority which mandates that the State is now estopped from making the present argument in this case.

The exception of prescription must be sustained. The remaining issues are pretermitted. The plaintiff is taxed with the court costs.

Done and Signed in chambers on this 22nd day of November, 1995.

/s/ Frank H. Thaxton,III
Frank H. Thaxton, III
District Judge

APPENDIX 10

SECOND CIRCUIT
COURT OF APPEAL
STATE OF LOUISIANA

DOCKET NUMBER 28745-CA

SAMUEL L. LIEBER, M.D.
PLAINTIFF - APPELLANT
VERSUS
CADDO LEVEE DISTRICT BOARD
OF COMMISSIONERS, ET AL.
DEFENDANTS - APPELLEE

CIVIL APPEAL BY
PLAINTIFF-APPELLANT SAMUEL L. LIEBER, M.D.
FROM THE FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA
HONORABLE FRANK H. THAXTON, III

ORIGINAL BRIEF FILED ON BEHALF OF
PLAINTIFF - APPELLANT,
SAMUEL L. LIEBER, M.D.

WIENER, WEISS, MADISON & HOWELL
A PROFESSIONAL CORPORATION

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PLAINTIFF-APPELLANT

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1. Given the established factual and legal conclusion of the Trial Court and the Court of Appeal that the Highway Department's 1953 Right of Way Deed was illegal and void ab initio, the Trial Court manifestly erred in subsequently finding that Plaintiff's claim for damages had prescribed. In its ruling on prescription, the Trial Court has manifestly erred by (a.) ignoring Plaintiff's cause of action for inverse condemnation arising from the illegal right-of-way agreement, (b.) confusing the foundation of Plaintiff's cause of action for inverse condemnation with Plaintiff's separate cause of action for excess taking, and (c.) misapplying the governing law to the particular undisputed facts of the case.....6

2. The Trial Court manifestly erred, through its ruling on prescription, in denying damages to Plaintiff as an effect of the finding that the 1953 Right-of-Way Agreement was absolutely null.....7

3. The Trial Court manifestly erred in failing to apply the doctrine of contra non valentem under the undisputed facts of this case as an equitable bar to DOTD's defense of prescription. The facts neces-

sary to put Plaintiff on notice of his claim of inverse condemnation arising from the illegal basis of the Right-of-Way Deed obviously were in a better position to be known to the representatives of the Highway Department and DOTD (Plaintiff's Exhibit "AAA - Revised"), but wrongfully were denied to Plaintiff 7

4. The Trial Court manifestly erred in finding that Plaintiff's claim for inverse condemnation had prescribed when, even if the Court had not erroneously confused Plaintiff's separate claims of inverse condemnation and excess taking, the excess taking claim arose from a continuing tort by the Highway Department and DOTD and therefore had not prescribed, either.....8

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EXHIBITS

1 JUDGMENT OF SECOND CIRCUIT COURT OF APPEAL RENDERED AUGUST 23, 1995, DOCKET NUMBER 25,267-CA

2 JUDGMENT AND OPINION OF HONORABLE FRANK H. THAXTON, 111, DISTRICT JUDGE, FIRST JUDICIAL DISTRICT COURT, RENDERED NOVEMBER 22, 1995

BRIEF ON BEHALF OF PLAINTIFF-APPELLANT, SAMUEL L. LIEBER

May It Please the Court:

STATEMENT OF THE CASE

This Honorable Court of Appeal already has affirmed the granting of Plaintiff-Appellant's Motion for Partial Summary Judgment in this case, *Lieber v. Caddo Levee District Board of Commissioners, et al*, Docket No. 27,267, 660 So. 2d 188 (La. App. 2d Cir. 1995). In doing so, this Honorable Court declared the 1953 right-of-way agreement over Plaintiff-Appellant's 2.09-acre tract of land at Youree Drive Extension and Kings Highway in Shreveport at issue in this lawsuit null and void *ab initio* as a violation of the law governing the Louisiana Highway Department and its successor, the Louisiana Department of Transportation and Development (DOTD), Defendant-Appellee. The Louisiana Supreme Court denied DOTD's application for writs in December, 1995.

The current appeal is being presented to this Honorable Court because the Trial Court subsequently denied Plaintiff's claim for damages arising from the illegal right-of-way agreement by ruling that the claim has prescribed. Therefore, the Trial Court, while originally finding that the right-of-way agreement was illegal, now has denied Plaintiff the right to claim damages because of the Highway Department/DOTD's wrongful withholding from Plaintiff of any use of his valuable commercial property for 42 years. Plaintiff submits that the Trial Court has manifestly erred in this ruling on prescription because it (1.) ignores Plaintiff's cause of action for inverse condemnation arising from the illegal right-of-way agreement, (2.) confuses the foundation of Plaintiff's cause of action for inverse condemnation with

Plaintiff's separate cause of action for excess taking, and (3.) misapplies the goveming law to the particular undisputed facts of the case.

Following trial on the merits on damages September 27 and 28, 1995, the Trial Court ruled on November 22, 1995, that Plaintiff's claim for damages for inverse condemnation under La. R. S. 13:5111 had prescribed as having been filed more than three years after discovery of the 'taking" by the Highway Department. The Trial Court characterized the facts necessary for discovery of the 'taking" to have occurred upon completion of the Youree Drive Extension Highway Project in 1954. However, at trial Plaintiff had testified that he had not been able to discover the illegal basis of the right-of-way agreement until between 1982 and 1985 because the Highway Department and DOTD consistently had misstated and misrepresented the true facts regarding the necessity of the property for highway purposes.

Any facts known to Plaintiff prior to 1982 concerning the use of his property by either the Highway Department or DOTD were limited to the permitted commercial uses being allowed to third parties by the Department/DOTD, while such uses were denied to Plaintiff. Plaintiff's claim for these permitted non-highway uses constituted an excess taking, which Plaintiff argues constitutes a continuing tort.

However, it is Plaintiff's position that he had a separate, distinct cause of action for inverse condemnation arising from the illegal right-of-way agreement, which he reasonably had not been able to discover over the misstatements and misrepresentations of the HighwayDepartment/ DOTD until between 1982 and 1985. The three-year preA-

scriptive period for a claim for inverse condemnation under R. S. 13:5111 does not begin to run until the date of discovery of the illegal taking. Plaintiff's evidence at trial shows that Plaintiff, Samuel L. Lieber, M. D., did not discover the illegality of the 1953 right of way deed obtained by the Department of Highways from Philip Lieber until after the date of Plaintiff's filing of his original petition on September 17, 1982. An amended petition was timely filed within three years, on July 12, 1985. As Dr. Lieber testified, he believed the repeated representations by Highway Department officials that his entire property was needed for highway purposes. Therefore, it is Plaintiff's position that he timely filed his amended petition alleging the illegality of the right-of-way agreement within three years of the date of his first reasonable discovery of the illegal taking.

Further, it is Plaintiff-Appellant's position that instead of one 'taking" of Plaintiff's property rights by the Highway Department/DOTD, there were two. The first occurred when the Highway Department obtained in 1953 what was discovered much later by Plaintiff to be an illegal right-of-way agreement over the property. The second occurred when the Highway Department permitted third party commercial use of what the Department claimed was necessary highway property, thereby constituting an "excess taking." A "taking" has been held by this Court of Appeal to be "any substantial interference with the free use and enjoyment of property." (*Simmons v. Board of Commissioners of Bossier Levee District*,) 624 So. 2d 935 at 951 (La. App. 2d Cir. 1993), emphasis by the Second Circuit Court of Appeal.

Therefore, Plaintiff-Appellant submits that he *has* met the test for prescription under inverse condemnation announced by the Trial Court: three years from the date

of discovery of the illegal "taking". The Trial Court manifestly erred in confusing (1.) the 'taking" arising from the illegal right-of-way agreement (unknown to the Plaintiff at the time), and (2.) the Highway Department's permitted third party commercial use of the subject Lieber property (which constituted an "excess" taking).

Moreover, it is Plaintiff's position that under the now-final ruling that the right-of-way was illegal, he should be awarded damages at least for that portion of his property covered by the present Youree Drive Extension in order to restore Plaintiff to the position before the right-of-way was executed.

FACTS

Plaintiff submits that through its prior ruling in this case this Honorable Court already has established some critical undisputed facts. In 1953, the Louisiana Department of Highways acquired numerous parcels of land for the construction of Youree Drive Extension in Shreveport, Louisiana, a limited access highway.

Philip Lieber, father and predecessor in title to Plaintiff, Samuel L. Lieber, M. D., owned a 2.09-acre parcel of land at the intersection of Kings Highway and the planned Youree Drive Extension. Instead of acquiring the parcel in fee, as required for limited access highways by the governing statute at the time, La. R. S. 48:312, the Department of Highways deliberately chose to acquire only a right-of-way over the subject Lieber property. The Department made this deliberate choice despite the fact that the Department was at the same time filing expropriation suits for acquisition in fee simple of numerous other parcels

of land for this same highway project. Please see Plaintiff's Exhibit AAA - Revised. The Department never disclosed to Philip Lieber either its legal constraint on acquisition, or admitted its violation of the law in the degree of ownership acquired, which legal violation was unknown to Philip Lieber or Plaintiff until after 1982.

The reasons why the Department of Highways presented Philip Lieber with the right of way deed in 1953 are clear. In the record is Plaintiff's Exhibit YY, an October 6, 1952 letter from C. L. Paschal, Senior Right of Way Agent for the Department of Highways, to M. F. Collier, Right of Way Agent, filed with Plaintiff's Motion to Reconsider. The Department of Highway's own letter states in pertinent part:

> "... we have used the Right of Way Deed for this transaction because there is a question as to the title to the property and a Right of Way Deed does not warrant the title."

Of course, Defendant has raised no question as to Plaintiff's title or that of Philip Lieber. The evidence merely shows that the Department of Highways deliberately chose the method by which it sought to acquire property rights from Philip Lieber for this highway project.

Following the completion of Youree Drive Extension in 1954, Plaintiff's father and later, Plaintiff himself, began a nearly 30-year effort to have the Department of Highways and DOTD release the unused portion of the subject Lieber property. However, despite the voluminous record of the years of requests made by the Liebers (52 exhibits), the Department of Highways and DOTD consistently refused to release the unused property by constantly

stating that it was necessary for highway purposes. This refusal continued despite the fact that the Department of Highways and DOTD admittedly allowed third parties repeatedly to use the subject Lieber property for economic gain, including parking for private trolley company use, parking for adjacent businesses, automobile sales to the public, and Christmas tree sales. The Liebers, on the other hand, were denied any economic benefit from the property during this entire period by DOTD and its predecessor.

Further, at the same time that DOTD and its predecessor were allowing third parties economic benefit from the subject Lieber property, the governmental entities also were allowing others (including the then Department of Highway's own Commissioner, Sherwood Loe) to make economic use of similarly situated property located at the northern end of this same highway project.

Finally, despite these clear facts, but having received no satisfactory response from the Department of Highways and DOTD to its requests for release of the unused property, Plaintiff filed suit in 1982. Thereafter, Plaintiff discovered that the Department of Highways in 1953, at the same time as the acquisition of its right-of-way from Philip Lieber, had argued vigorously in the *Bessie Barrow* case (*State of Louisiana, through the Department of Highways vs. Mrs. Bessie Harman Barrow,* Docket No. 115708, First Judicial District Court Opinion 11-12-53; affirmed 238 La. 887, 116 So. 2d 703 (1959)) in the face of a plea by another property owner on this same Youree Drive Extension highway project that the Department of Highways limit its acquisition of her property to a right-of-way, that the Department was required by law (La. R. S. 48:312) to acquire the property for this limited access highway in fee

only. The First Judicial District Court and this Honorable Court agreed with this interpretation of law by the Department of Highways.

Following this discovery, Plaintiff amended his petition in 1985, alleging that the right-of-way deed acquired by the Department of Highways from Philip Lieber was and is illegal and void as being contrary to public order, namely, the governing law of La. R. S. 48:312. By granting Plaintiff's Motion for Partial Summary Judgment on this issue, the Honorable First Judicial District Court, Judge Frank Thaxton, III, agreed, following the persuasive precedent argued by DOTD's own predecessor, the Department of Highways, in the *Bessie Barrow* case. This Honorable Second Circuit Court of Appeal upheld the Trial Court, ruling through a unanimous panel.

C. The Trial Court erred in apparently dismissing the persuasive precedent of the *Barrow* decision In the present case on the merits, when *Barrow* had been relied upon in granting Plaintiff's Motion for Partial Summary Judgment.

Trial Court's Opinion:

"And simply because the State has taken a contrary legal position in an unrelated case, there is no legal authority which mandates that the State is now estopped from making the present argument in this case."

Record evidence: It is unclear to Plaintiff-Appellant

what case the Trial Court is referring to in this statement. If the reference is to the *Barrow* decision of the First Judicial District Court as persuasive precedent of the position of the Highway Department on the applicable law in 1953, then the statement is contrary to the position previously taken by the Trial Court in granting Plaintiff's Motion for Partial Summary Judgment. It the reference is to the Barrow/Chandler S & L Marine property at the northern end of Youree Drive Extension, then Plaintiff shows the facts speak for themselves: that property, like the subject Lieber property, is located within the confines of the highway right-of-way, yet the landowner was allowed commercial use of his property in that instance, when such use was,denied to the Liebers.

2. The Trial court manifestly erred, through its ruling on prescription, in denying damages to Plaintiff as an effect of the finding that the 1953 Right-of-Way Agreement was absolutely null.

Given the finality of the judgment that the 1953 right-of-way is absolutely null, the Trial Court manifestly erred through its ruling on prescription in denying damages to Plaintiff as an effect of this finding under La. C. C. Art. 2033.

La. C. C. Art. 2033 provides, in pertinent part:

> "An absolutely null contract, or a relatively null contract that has been declared null by the court, is deemed never to have existed. The parties must be restored to the situation that existed before the contract was made. **If it is impossible or impracticable to make restoration in kind,**

it may be made through an award of damages." (Emphasis added.)

In what may be a case of first impression on this issue as applied to the facts presented in this case, Plaintiff respectfully shows that it is impossible to make complete restoration "in kind" to the situation that existed before the illegal contract was made.

First, it is impossible to return the entire property subject to the illegal right-of-way to Plaintiff. Youree Drive Extension has been paved over a portion of the tract, for which Plaintiff should receive compensation in the amount suggested by Plaintiff's expert appraiser, Robert L. Russell, MAI. For the roadbed itself, which never will be returned to Plaintiffs use, the value in 1985 (date of discovery of the illegal taking) is $200,000.00. Adding legal interest from the date of taking, December, 1954, Mr. Russell calculated a value of $2,980,000.00 for the invalid taking of this Tract 1. (Plaintiff's Exhibit "DDD," p. viii.) The usual measure of damages in inverse condemnation cases is the value of the property or property right as of the date of discovery of the taking. Please see *Chenevert v. Louisiana State Department of Highways,* 345 so. 2d 960 (La. App. 4th Cir. 1977); *Jungeblut v. Parish of Jefferson*, 485 S. 2d 974 (La. App. 5th Cir. 1986); *Powell v. Department of Highways, supra.*

A damage award for inverse condemnation includes legal interest from the date of taking. *A. K. Roy, Inc. v. Board of Commissioner for Pontchartrain Levee District,* 117 So. 2d 60 (La. 1960); *Reddel v. State Department of Highways*, 340 So. 2d 1010 (La App. 4th Cir. 1976); *Simmons v. Board of Commissioners of Bossier Levee District, supra.*

Second, merely to restore the remainder of Plaintiff's property denies to Plaintiff the valuable commercial use he could have made of the property since the time of the illegal right of way in 1953.

The effect of the Department of Highways obtaining the 1953 right-of-way over the subject Lieber proerty and holding it until the denial of writs by the Louisiana Supreme Court in December, 1995 (except for the portion quitclaimed by DOTD in 1989) is no different from the Department having illegally held Plaintiff's funds for over 42 years. To restore only a portion of the funds, without legal interest and without recognition of the damages to Plaintiff which resulted from denial of commercial use of this valuable piece of property at one of Shreveport's busiest intersections, is not enough under law. See, for example, *Nicaud v. Fonte*, 503 So.2d 79 (La. App. 5th Cir. 1987), awarding the return of a deposit of money made under an absolutely null contract, plus legal interest on the deposit returned.

It particularly is unjust to prevent Plaintiff even from claiming damages as an effect of the illegal right-of-way under the Trial Court's ruling on prescription. Under La. C. C. Art. 2032 "[an] action for annulment of an absolutely null contract does not prescribe." Therefore, it follows from a matter of law and justice that a claim for damages due to the impossibility or impracticability of making restoration in kind under La. C. C. Art. 2033 does not prescribe, either.

Plaintiff's valuable property rights are protected by the Constitutions of the United States and the State of Louisiana. The Fourteenth Amendment of the United States Constitution provides, in part, as follow:

"No State shall make or enforce any law which shall abridge the privileges or immunity of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law."

Art. 1, Section 10, of the United States Constitution prohibits a state from passing a retroactive or ex post facto law that would destroy a vested, right or impair the obligation of contract.

The Louisiana Constitution provides, in part, in Article 1, Sections 2 and 4, as follows:

"Sec. 2. Due Process of Law
No person shall be deprived of life, liberty or property, except by due process Of law.

Sec. 4. Right to Property
Every person has the right to acquire, own, control, use, enjoy, protect and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.
Property shall not be taken or damaged by the state or its political subdivisions except for Public Purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question."

As stated by the Honorable First Judicial Court through Judge Charles Scott in the opinion rendered March 3, 1993, in *Caddo-Bossier Parishes Port Commission versus Tensas Delta Land Co.*, et al, Number 382,509 (quoted at Appeal Record, Vol. II of II P. 490):

"Article 1, Section 4 of the Louisiana Constitution was intended to give 'far-reaching new protection' to the right of citizens to own and control private property." *State V. 1971 Green GMC Van,* 354 30.2d 479 (La. 1977). This language in Article 1 goes beyond other state constitutions, including the 1921 constitution of the State of Louisiana and the federal constitution in limiting the power of government to regulate private property. *State*, supra; L. Jenkins, *The Declaration of Rights,* 21 Loy. L. Rev. 9, 19 (1975); L. Hargrave, *The Declaration of Rights of the Louisiana Constitution* of 1974, 35 La. L. Rev. 1 (1974); *Guidry v. Roberts*, 335 So. 2d 438 (La. 1976).

Recovery of damages for violations of the above constitutional mandates, therefore, is to the "full extent of loss." It has been held that the determination of what will compensate "to the full extent of the loss":

> "must be made on the basis of the facts of each case and in accord with the uniqueness of the property right taken." *Naquin v. Department of Transportation and Development Of State of Louisiana,* 604 So. 2d 62 at 65 - 66 (La App. 1st Cir. 1992), writ denied,

Plaintiff respectfully submits that the Trial Court has erred in denying Plaintiff's opportunity to claim damages "to the full extent of the loss."

3. The Trial Court manifestly erred in failing to apply the doctrine of contra non valentem under the undisputed facts of this case as an equitable bar to DOTD's defense of prescription. The facts necessary to put Plaintiff on notice of his claim of inverse condemnation arising from the illegal basis of the Right-of-Way Deed obviously were in a better position to be known to the representatives of the Highway Department and DOTD (Plaintiff's Exhibit "AAA - Revised"), but wrongfully were denied to Plaintiff.

Without repeating all of the arguments set forth in Specification of Error No. 1 above, Plaintiff respectfully suggests that any consideration of prescription in this case also consider the application of the doctrine of contra non valentem agere nulla currit praescriptio, to the factual situation of this case. As in the case of *Powell v. Department of Highways, supra*, the doctrine applies where the debtor "has committed other acts which tend to hinder, impede or prevent the creditor from ascertaining knowledge of the

APPENDIX 11

Judgment rendered October 30, 1996.
Application for rehearing may be
filed within the delay allowed by art.
2166. La. C.C.P.

No. 28.745-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

SAMUEL L. LIEBER — Plaintiff-Appellant

Versus

STATE OF LOUISIANA, DEPARTMENT
OF TRANSPORTATION & DEVELOPMENT
Defendant-Appellee

* * * * *

Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 290,553

Honorable Frank H. Thaxton, III, Judge

* * * * *

WEINER, WEISS, MADISON
& HOWELL — Counsel for
By: Neil T. Erwin — Plaintiff-Appellant

RONALD J. BERTRAND — Counsel for
Defendant-Appellee

* * * * *

Before MARVIN. HIGHTOWER and PRICE. JJ.

MARVIN, C. J.

In this action for damages and attomey fees founded on the wrongful taking, of about two acres of Lieber property in the 1950s for the construction of the extension of La. Highway I in Shreveport (Youree Drive north of its intersection with Kings Highway) by the State Department of Highways (now DOTD), Dr. Lieber, successor in title to his father who owned the property when the taking occurred, appeals a judgment sustaining the State's plea of prescription and rejecting Dr. Lieber's demands. La. Const. art. 1, § 4; La. R.S. 13:5111.

We amend and affirm.

FACTS

Dr. Lieber's father, Philip Lieber, owned the property in question in 1953 on which existed a portion of a levee about 86 feet in width that had been formally abandoned by the Caddo Levee District years after it was constructed. That levee was a part of a system that protected the area against flooding by the Red River. Some portions of the original system had to be redesigned because of changes in the river, resulting in the abandonment of portions of the levee. *See Lieber v. Hamel*, 446 So. 2d 1240 (La. App. 2d Cir. 1983), *writ denied.*

According to a 1952 internal Department of Highways document discussing the existence of the levee and the proposed highway extension:

> This area was apparently never dedicated for public use and when the levee is removed the title will

> apparently revert to Philip Lieber. It would seem that the area as it now exists is useless to the owner and ***we have used the Right of Way Deed for this transaction because there is a question as to the title to the property and a Right of Way Deed does not warrant the title.*** Under a Right of Way Deed the owner will also retain whatever mineral rights he may have. If possible we would prefer to secure this parcel of right of way by donation on account of the question as to the title. (Our emphasis.)

In 1953 Philip Lieber executed a right of way deed to the State for $2.500 describines the two acres in question. The State removed the levee and thereafter completed the extension of the highway in December 1954.

Soon after the project was completed, Philip Lieber realized that some of the property included in the right of way deed had not been used in the project. On July 14, 1955, Lieber's lawyer wrote the State requesting that the right of way be "confined to that part of the property actually occupied by the completed highway so that [Lieber] might make other uses of the remainder of the property." The Department quickly denied this request, according to a letter written by Lieber's lawyer to his client on July 20, 1955, quoting for Lieber the Department's response:

> The Department feels that it is to the Department's advantage to retain all of the right-of-way obtained from Mr. Lieber and therefore cannot favorably consider Mr. Lieber's request.

For about a year thereafter, Philip Lieber personally corresponded with the director of the Highway Department

and with other state officials, explaining his desire to donate a portion of the unused acreage to a local church and to build a medical clinic for his son and other young doctors on the rest of the land, situated at what was becoming a major traffic intersection with heavy commercial development. Lieber also complained that the Shreveport Railways Company (municipal trolley system) was being allowed to use the vacant land to provide its customers with free parking, without Lieber's consent.

By letter of April 17, 1956, the director of the Highway Department inforrried Lieber that

> this property was purchased for adequate "sight distance" [at the busy intersection] and I understand that permission was granted the Shreveport Railways Company by Mr. Lane Mitchell for its use as a parking lot. Such a use, however, is contrary to Highway [Department] policy and I am today writing the Shreveport Railways Company that they can no longer occupy this site as it is our plan to beautify this section in accordance with [federal] requirements. (Our brackets.)

Lieber took no further action thereafter, in or out of court, according to this record.

About ten years later, on April 6, 1966, Lieber sold to his son, Dr. Samuel Lieber, his interest in several tracts of Shreveport land, including the land at Youree Drive and Kings Highway, over which Lieber had granted the right of way to the State in 1953. The land was sold "without warranty but with substitution and subrogation to all rights and actions of warranty against all former proprietors of the

property herein conveyed, together with all rights of prescription, whether acquisitive or liberative, to which [Philip Lieber] may be entitled[.]"

When Dr. Lieber acquired the property, both he and his father regarded the 1953 right of way deed as a valid and binding document. Their only complaint at that time concerned the fact that the State did not use all of the land described in the deed for the extended roadway, the public purpose for which the right of way was granted. In correspondence with the State from 1966-1969, both with and without counsel, Dr. Lieber questioned the State's assertions that the excess property was needed for a public purpose, and complained of one or more Shreveport civic clubs being allowed to use the property to sell Christmas trees. This correspondence ended cordially, but unfavorably to Dr. Lieber, in December 1969.

Dr. Lieber made no further formal complaints or demands about the Youree Drive property from 1969 until 1982, when he filed this action for declaratory judgment to determine the ownership of several tracts of "levee land" in Shreveport, including this land and another levee tract on 70th Street that became the subject of other litigation with the Hamel family. *See Lieber v. Hamel.* cited *supra.* It is unclear who the original defendants were in the 1982 petition, which Dr. Lieber filed in proper person, though they apparently included the Hamels and the Caddo Levee District Board of Commissioners.

By amended petition filed in July 1985, Dr. Lieber alleged for the first time that the 1953 right of way agreement between his father and the State for the extension of Youree Drive was invalid because the "State Highway

Department erred in buying a servitude and not fee simple[.]" Dr. Lieber alleged that the State's right of way agreement with his father was an absolute nullity under forrner La. R.S. 48:312, which required the State to take fee title, and not merely a servitude or right of way, when acquiring property rights for a limited-access highway. The statute was in effect in 1953, but was repealed in 1955.

Still representing himself in 1985, Dr. Lieber requested a declaratory judgment recognizing that the "State Department of Highways . . . [has] no bona fide right of way" over the property, and that the State's exercise of the'"illegal servitude" violated Dr. Lieber's due process and equal protection rights.

Dr. Lieber thereafter retained counsel, who filed additional amended petitions from 1988-1991, alleging with more particularity the "inverse condemnation" claim asserted by Dr. Lieber in his pro se pleadings, based on the invalidity of the 1953 right of way deed.

For the first time in the 1988 amended petition, Dr. Lieber alleged that only a portion of the two-acre tract described in the right of way deed was used in the highway project. He claimed that the State had denied the Liebers the right to use the remaining acreage while allowing third parties to make commercial use of it, thereby violating the Liebers' constillutional rights to compensation for the taking of their property and to due process and equal protection of law. In addition to his claims for damages and attomey fees for both the "illegal" taking of a servitude instead of fee title at the outset, and for the "excess" taking of more land than was actually used in the highway project, Dr. Lieber sought to have full ownership of the excess land restored to him.

In December 1989, the State quitclaimed its interest in about two thirds of the part of the tract that was not used by the State for the highway extension. After unsuccessfully arguing that the quitclaim deed was intended to serve as a compromise of all of Dr. Lieber's claims, the State later admitted that it had no written compromise agreement with Dr. Lieber. The State further admitted in the pre-trial order that it "**asserts no facts is its basis for claiming the continued utility of a servitude over the unpaved portion of the subject Lieber property at Youree Drive and Kings Highway not covered by the ... Quitclaim Deed** ... other than the potential use of the servitude area by the City of Shreveport in proposed improvements to Kings Highway." Our emphasis. Dr. Lieber thereafter reiterated his claim that the State "should return the entire [unused portion of the] property." Our brackets.

While the validity of the 1953 right of way agreement was being litigated, the State filed exceptions of no right of action and prescription to Dr. Lieber's *damage* claims. The exceptions to, and the merits of, those claims were tried in September 1995, after this court affirmed the partial summary judgment declaring the 1953 right of way agreement null in *Lieber v. Caddo Levee District Board of Commissioners.* 27.267 (La. App. 2d Cir. 8/23/95), 660 So. 2d 188. *writ denied.*

The State's plea of prescription is not directed to Dr. Lieber's demand that the State relinquish any interest it may have in the portion of the "excess" land which was not included in the quitclaim deed. The State has candidly admitted having no factual basis for claiming that this land is needed for a public purpose. Under these circumstances, we shall amend the judgment to declare that the State has no

possessory interest in the portion of the two acres not used by the State in the construction and maintenance of the highway. Our references hereafter to the "claim for excess taking," and to the prescriptive period applicable to that claim, shall be limited to the claim for *damages and attorney fees* for the excess taking.

PRESCRIPTION OF DAMAGE CLAIMS

At the hearing on the exceptions, Dr. Lieber admitted that both he and his father knew soon after the project was completed in 1954 that some of the land described in the 1953 right of way deed, which the Liebers then regarded as valid, had not been used in the project. Dr. Lieber testified that he knew the State had refused his father's requests to relinquish its interest in the excess land, not only when he bought the property from his father in 1966, but "***from 1955 on.*** " Our emphasis. His explanation for having waited until 1982 to file this action, in which the excess taking claim was first raised by the amended petition filed in 1988, was that he was "too busy" with litigation over other Shreveport properties in the interim. See, for example, *Lieber v. Hamel,* cited *supra*; *Lieber v. Rust*, 3 88 So. 2d 836 (La. App. 2d Cir. 1980), *affirmed*, 398 So. 2d 519 (La. 1981) and *Lieber v. Ownership of Real Property Located in Caddo Parish*, 501 So. 2d 957 (La. App. 2d Cir. 1987), *writ denied.*

In contrast to his admission that he had known of the **excess** taking since 1955, Dr. Lieber testified that he first discovered the **illegality** of the 1953 right of way agreement under former R.S. 48:312. which was repealed in 1955. At some unspecified time between the filing of his original and first amended petitions in this action in 1982 and 1985, respectively. During that time, and without the assistance of

a lawyer, Dr. Lieber researched the public records in Caddo Parish and

> realized that there were suits related to the [Youree Drive extension project]. And when I read those suits it opened my eyes that the Highway Department argued that they simply had to buy fee title [from other landowners] ***because the laws stated so***, and I thought that it was illegal for them to buy a servitude [from my father] because of that. (Our emphasis and brackets.)

Dr. Lieber thereafter alleged the illegality of the 1953 right of way deed in his amended petition filed in July 1985. The State did not raise the exception of prescription as a bar to litigating the *validity* of the deed, apparently because the deed was alleged, and later found, to be an absolute nullity not subject to liberative prescription. See La. C.C. arts. 2030-2032 and *Lieber v. Caddo Levee District, supra*, 27,267 at p. 10; 660 So. 2d at 193. See also *Byrd v. Byrd*, 230 La. 260, 88 So. 2d 214 (1956).

The State's plea of prescription to the claims for damages and attorney fees is founded on La. R.S. 19:14, 19:2.1 and 13:5111. These statutes respectively

> - recognize that the state may acquire private property for a public purpose without formal expropriation proceedings, and without *prior* payment of constitutional compensation, by constructing public facilities on the property in good faith and with the consent or acquiescence of the owner (R.S. 19:14, enacted in 1976 to codify the jurisprudential doctrine of *St. Julien v. Morgan L. & T Railroad Co.*, 35 La. Ann. 924 (1983));

- require the owner in such circumstances to bring his claims for compensation and for damages caused by the taking within two years from "the date on which the property was actually occupied and used" for a public purpose (R.S. 19:14, incorporating by reference the provisions of R.S. 19:2.1, which apply to takings by formal expropriation proceedings);

- or alternatively, require that actions for compensation including reasonable attorney fees, "for the taking of property by the (state], other than through an expropriation proceeding," be brought within three years from "the date of such taking." (R.S. 13:5111, the substance of which was enacted as R.S. 13:5061 in 1972).

Notwithstanding the literal wording of the statute, the three-year prescriptive period of § 5 111 is deemed to begin only when the owner *discovers the fact* that his property has been taken. *Powell v. Department of Highways,* 383 So. 2d 425 (La. App. 4th Cir. 1980), *writ denied*; *Jungeblut v. Parish of Jefferson*, 485 So. 2d 974 (La. App. 5th Cir. 1986).

The State also filed an exception of no right of action, asserting that the right to claim compensation and damages for the taking of property is personal to the property owner at the time of the taking unless the right is expressly transferred to a subsequent owner. See generally *McCutchen v. Texas & P. Ry. Co.*, 118 La. 436, 43 So. 42 (1907); *Brooks v. New Orleans Public Service, Inc.*, 370 So. 2d 686 (La. App. 4th Cir. 1979), *writ denied*

TRIAL COURT RULING

The trial court sustained the prescription exception

without reaching the exception of no right of action. Because the record supports the court's ruling that the damage claims have prescribed, we shall assume solely for discussion purposes, without deciding that Dr. Lieber has a right of action to bring those claims.

The trial court applied the three-year prescriptive period of R.S. 13:5111, rather than the two-year period of R.S. 19:14, giving Dr. Lieber the benefit of the longer period. Notwithstanding the invalidity of the 1953 right of way deed, the trial court essentially found that the Liebers knew the State had taken the land that was actually used for the extension of Youree Drive when the extension project was completed in 1954. With respect to the land that was not used in the project, the court found that prescription began in 1955. When the Liebers learned of the State's refusal to relinquish the excess land.

Dr. Lieber argued in the trial court that prescription on his claims was interrupted under the doctrine of *contra non valentem.* He maintained that prescription on his inverse condemnation claim arising from the defective right of way agreement did not begin to run until he discovered in the early 1980s, the *law* which rendered the agreement null. Emphasizing that his father did not know of this law when he granted the right of way to the State, Dr. Lieber claimed that the State knew or should have known of this law when its agents or employees "refused [to buy from] my father fee title, [and instead] bought a servitude." Our brackets.

Dr. Lieber made a similar argument on the excess taking claim, contending prescription was interrupted by the State"s repeated representations. over a period of decades, that all of the land was needed for a public purpose.

The trial court deemed *contra non* inapplicable, saying neither the Liebers' "lack of knowledge of the law" nor the State's representations regarding the *reasons* for the excess taking served to interrupt prescription. These rulings form the crux of Dr. Lieber's appeal.

DISCUSSION

Inverse Condemnation Claim

Before addressing Dr. Lieber's *contra non valentem* arguments, we briefly note that the record does not support his assertion that the State affirmatively "refused to buy fee title" from Philip Lieber in 1953. There is no evidence in this record to show or suggest that Lieber desired or offered to sell the property outright, notwithstanding that he was then the president of a local savings and loan association with many years of experience in real estate dealings, both professionally and personally.

The internal Department of Highways correspondence in 1952 mentioned above suggests two *benefits* to Lieber in conveying only a servitude rather than full ownership to the State: He would not be expected to warrant title to the leveeburdened land, which he apparently acquired through liquidation proceedings involving a failed real estate development company, and he would retain the mineral rights. Ordinarily, the landowner *prefers* to grant lesser rather than greater property rights to the expropriating authority. See, for example, *State Dept. of Highways v. Olinkraft, Inc.*, 350 So. 2d 865 (La. 1977) (on rehearing) and *Red River Waterway Commission v. Fredericks*, 566 So. 2d 79 (La. 1990).

Notwithstanding that the State's acquisition of a servitude from Lieber for this limited-highway access project clearly violated former R.S. 48:312, which was in effect for only a relatively short time, 1944-1955, we simply cannot ascribe any ill motives to the State in this particular case. According to this record, and even without the invalid right of way deed, it is apparent that the State's initial "appropriation" or "inverse condemnation" of Lieber's property for the extension of Youree Drive was done in good faith and for a public purpose. Lieber's sole objection to the project, regarding the quantity of the land taken, arose only after the project was completed.

Under the law in effect at the time of the taking, the State may be said to have acquired a valid interest in the Lieber property under the *St. Julien* doctrine, at least as to that part of the property actually used for the extension of Youree Drive. See generally *State Dept. of Highwavs v. Champagne*, 371 So. 2d 626, 631 (La. App. 1st Cir. 1979); *reversed in part on other grounds*. 379 So. 2d 1069 (La. 1980). This is true even if Philip Lieber's acquiescence in the initial taking resulted from his erroneous belief that the 1953 right of way agreement he signed was legally valid. See and compare *Veillon v. Columbia Gulf Transmission Co.*, 192 So. 2d 646 (La. App. 3d Cir. 1966), *writ denied.*

At least as to the property actually used for a public purpose, which the State could have validly taken even without a right of way deed, Lieber was relegated to a claim for compensation, which was then regarded as a personal action subject to a ten-year prescriptive period under former La. C.C. art. 3544 (now Art. 3499). See and compare *McCutchen v. Texas & P. Ry. Co., cited supra*, and *Maxfield v. Gulf States Utilities Co.*, 65 So. 2d 615 (La. App. 1st Cir.

1953). Lieber did not bring a claim for compensation, nor an action to challenge the extent of the taking, even after the State refused to relinquish its rights to the excess land in 1955.

Contra Non Valentem: Ignorance of Law . v. Ignorance of Facts

Dr. Lieber argues that prescription on the inverse condemnation was interrupted until the early 1980s, when he discovered a *legal* basis for arguing that the right of way deed signed by his father in 1953 was invalid. He makes a similar argument on the excess taking claim, essentially contending that both he and his father were "lulled" into refraining from legal action regarding the land that was not used in the 1954 state project by the State's repeated [mis-]representations that the excess property was needed for a public purpose, such as to provide adequate sight distance at the intersection or to incorporate a nearby city street into the highway plan as a service road.

These arguments miss the important distinction between ignorance of the *facts* giving rise to a legal claim. And ignorance of one's *legal rights* under the known facts. While factual ignorance may prevent the running of prescription in some circumstances, ignorance of the law does not. See *Hawthorne v. La. Dept. of Public Works*, 540 So. 2d 1261 (La. App. 3d Cir. 1989), *writ denied*; *Knighten v. Knighten*, 447 So. 2d 534 (La. App. 2nd Cir. 1984), *writ denied*; and Hampton v. Kroger Co., 27,073 (La. App. 2d Cir. 6/21/95), 658 So. 2d 209, *writ denied*.

The situation here is analogous to *Hawthorne*. There, the court stated:

> [P]laintiffs ... were aware of the permanent flooding of their respective properties since the spring and summer of 1972, when the water first failed to subside and drain away as it had done prior to the construction of the Jonesville Lock and Dam. ***It was only their rights under these known facts that plaintiffs were allegedly unaware of until such time as the Boothe case was decided*** [by the third circuit in 1979,] ... having relied ... until such time ... upon prior communications from the Corps of Engineers which supposedly indicated that no compensation was due to landowners ... whose property was inundated as a result of the construction of the Jonesville Lock and Dam....
>
> ... [P]rescription on plaintiffs' claims [under R.S. 13:5111] began to run, at the latest, at the end of the summer of 1972, at which time ... plaintiffs were fully aware of the permanent inundation of their properties .... Hawthorne filed his suit [in] 1981, and the Coopers' suit was filed [in 1980]. Nothing prevented plaintiffs from instituting suit on an earlier date, as was done by the plaintiffs in *Boothe*. ***They chose not to do so and their misunderstanding, if any there be, as to their legal rights did not toll the running ofthe prescriptive period under R.S. 13:5111.***
>
> 540 So. 2d at 1263-64. Emphasis and brackets supplied; footnotes omitted.

In a different context, this court has held that one with factual knowledge that he has been extorted cannot

invoke *contra non valentem* to delay the running of prescription while he gathers evidence to corroborate his account of the facts. *Gulf States Land & Development, Inc. v. Ouachita National Bank*, 612 So. 2d 1031 (La. App. 2d Cir. 1993), *writ denied.*

Synthesizing the reasoning in *Hawthorne* and in *Gulf States*, we decline to adopt Dr. Lieber's suggestion that he and his father should be excused from having failed to take legal action on the excess taking claim for a period of years or even decades after they became aware of the factual basis for the claim. simply because they relied on their adversary's representations as to the merits of the claim.

Similarly, the Liebers knew from the outset that the 1953 right of way deed did not purport to convey full ownership of the Lieber property to the State. The *fact* that the State purchased or expropriated other property for the same project in full ownership was a matter of public record, as was the statute which rendered the 1953 agreement invalid. The delay in discovery by the Liebers of the *legal implications* of the known and knowable facts did not prevent the running of prescription on the inverse condemnation claim.

Continuing Tort Theory

Dr. Lieber argues that the State's taking of more land than was needed for the Youree Drive extension project, and allowing third parties to use the excess land to the exclusion of the Liebers, constitutes a continuing tort, as to which prescription does not begin until the tortious conduct ceases. This theory has been unsuccessfully raised in other cases involving the taking or damaging of property for a public purpose without formal expropriation proceedings. See

Lyman v. Town of Sunset, 500 So. 2d 390 (La. 1987) and *Hawthorne, supra*. As did the court in each of those cases, we decline to apply the general tort rules concerning the commencement and length of the prescriptive period to a claim against a public body which is governed by a more specific statutory provision (two years from the time damages are sustained. When private property is damaged for a public purpose, in *Lyman*, applying R.S. 9:5624 before its 1987 amendment; and three years from the date of discovery of a taking " other than through an expropriation proceeding" in *Hawthorne*, applying R.S. 13:5111).

Denial of Due Process and Equal Protection.

Dr. Lieber's claims for damages for the denial of his constitutional due process and eqiial protection rights arise from the same facts forming the basis of his claim that the property was taken or damaged by the State without the payment of just compensation. On this record, the resolution of the latter more specific constitutional claim also resolves the former, more general constitutional claims.

CONCLUSION

The claims for which Dr. Lieber seeks damages and attorney fees under La. Const. art. 1, § 4 and R.S. 13:5111 - the "inverse condemnation" of the entire two acre tract and the "excess taking" of more land than was apparently used for the state project - both arise from "the taking of property by the [state], other than through an expropriation proceeding," in the words of § 5111. These claims were brought more than three years after discovery of the *facts* involved in the respective takings. On this record, and notwithstanding the invalidity of the 1953 right of way deed, we find no basis to disturb the trial court's ruling that the damage claims asserted by Dr. Lieber, even if he has a right of action

to bring them, have prescribed. Compare *Powell v. Department of Highways* and *Jungeblut v. Parish of Jefferson,* both cited *supra.* See also and compare the pre-§ 5111 case of *Chenevert v. La. State Dept. of Highways*, 345 So. 2d 960 (La. App. 4th Cir. 1977), *writ denied.*

DECREE

We amend the judgment to declare that the State has no possessory interest in the portion of the two acres not used by the State in the construction and maintenance of La. Highway 1, as that two acres was described in the 1953 right of way deed from Philip Lieber to the State Department of Highways. In all other respects, and as amended, the judgment is affirmed. Costs of the appeal are assessed to Dr. Lieber.

AMENDED AND, AS AMENDED, AFFIRMED

APPENDIX 12

The Supreme Court of the State of Louisiana

SAMUEL L. LIEBER

VS. NO. 97-C - 0087

CADDO LEVEE DISTRICT BOARD
OF COMMISSIONERS, STATE OF LOUISIANA,
DEPARTMENT OF TRANSPORTATION
& DEVELOPMENT

IN RE: Lieber, Samuel L.; - Plaintiff(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Second Circuit, Number 28745-CA; Parish of Caddo First Judicial District Court Div."E" Number 290,553

March 7, 1997
Denied.

WFM
PFC
HTL
CDK
BJJ
JPV
JTK

TRAYLOR, J. not on panel.

Supreme Court of Louisiana
March 7, 1997

/s/ illegible
Clerk of Court
For the Court

APPENDIX 13

The Supreme Court of the State of Louisiana

SAMUEL L. LIEBER, M.D.

vs. NO. 97-C-0087

CADDO LEVEE DISTRICT BOARD OF COMMISSIONERS, STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION & DEVELOPMENT

IN RE: Samuel L. Lieber, M.D., applying for Reconsideration of this Court's Order dated March 7, 1997; to the Court of Appeal, Second Circuit, No. 28745-CA; Parish of Caddo, First Judicial District Court, Div. "E", No. 290,553.

April 18, 1997

Deny; Judgment is definitive.

BJJ
PFC
WFM
HTL
CDK
CDT
JTK

VICTORY, J., - not on panel.

Supreme Court of Louisiana
April 18, 1997

/s/ illegible
Clerk of Court
For the Court

APPENDIX 14

NULLITY Title 4

Art. 2030. Absolute nullity of contracts

A contract is absolutely null when it violates a rule of public order, as when the object of a contract is illicit or immoral. A contract that is absolutely null may not be confirmed.

Absolute nullity may be invoked by any person or may be declared by the court on its own initiative.

Acts 1984, No. 331, § 1, eff. Jan. 1, 1985.

Art. 2032. Prescription of action

Action for annulment of an absolutely null contract does not prescribe.

Action of annulment of a relatively null contract must be brought within five years from the time the ground for nullity either ceased, as in the case of incapacity or duress, or was discovered, as in the case of error or fraud.

Nullity may be raised at any time as a defense against an action on the contract, even after the action for annulment has prescribed.

Acts 1984, No. 331, § 1, eff. Jan. 1, 1985.

Art. 2033. Effects

An absolutely null contract, or a relatively null contract that has been declared null by the court, is deemed never to have existed. The parties must be restored to the situation that existed before the contract was made. If it is impossible or impracticable to make restoration in kind, it may be made through an award of damages.

Nevertheless, a performance rendered under a contract that is absolutely null because its object or its cause is illicit or immoral may not be recovered by a party who knew or should have known of the defect that makes the contract null. The performance may be recovered, however, when that party invokes the nullity to withdraw from the contract before its purpose is achieved and also in exceptional situations when, in the discretion of the court, that recovery would further the interest of justice.

Absolute nullity may be raised as a defense even by a party who, at the time the contract was made, knew or should have known of the defect that makes the contract null.

Acts 1984, No. 331, § 1, eff. Jan. 1, 1985.

APPENDIX 15

PRELIMINARY TITLE

Art. 7. Laws for the preservation of the public interest

Persons may not by their juridical acts derogate from laws enacted for the protection of the public interest. Any act in derogation of such laws is an absolute nullity.

Acts 1987, No. 124, § 1, eff. Jan. 1, 1988.

Art. 11. Meaning of words

The words of a law must be given their generally prevailing meaning.

Words of art and technical terms must be given their technical meaning en the law involves a technical matter.

Acts 1987, No. 124, § 1, eff. Jan. 1, 1988.

Art. 12. Ambiguous words

When the words of a law are ambiguous, their meaning must be sought by examining the context in which they occur and the text of the law as a whole.

Acts 1987, No. 124, § 1, eff. Jan. 1, 1988.

Art. 12. Ambiguous words

When the words of a law are ambiguous, their meaning must be sought by examining the context in which they occur and the text of the law as a whole.

Art. 1759. Good faith

Good faith shall govern t whatever pertains to the obligation.

Acts 1984, No. 331, § 1, eff. Jan. 1, 1985.

Art. 1953. Fraud may result from misrepresentation or from silence

Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction.

ts 1984, No. 331, § 1, eff. Jan. 1, 1985.

Art. 1954. Confidence between the parties

Fraud does not vitiate consent when the party against whom the fraud was directed could have ascertained the truth without difficulty, inconvenience, or special skill.

This exception does not apply when a relation of confidence

has reasonably induced a party to rely on the other's assertions or representations.

Acts 1984, No. 331, § 1, eff. Jan. 1, 1985.

1968. Unlawful cause

The cause of an obligation is unlawful when the enforcement of the obligation would produce a result prohibited by law or against public policy.

Acts 1984, No. 331, § 1, eff. Jan. 1, 1985.

Comment

This Article restates the basic principle contained in C.C. Art. 1895 (1870). It does not change the law.

SECTION 1. GENERAL EFFECTS OF CONTRACTS

Art. 1983. Law for the parties; performance in good faith

Contracts have the effect of law for the parties and may be dissolved only through the consent of the parties or on grounds provided by law. Contracts must be performed in good faith.

Acts 1984, No. 331, § 1, eff. Jan. 1, 1985.

Comment

This Article reproduces the substance of C.C. Art.1901 (1870). It does not change the law.

Ar t. 3477. Precarious possessor; inability to prescribe

Acquisitive prescription does not run in favor of a Precarious possessor or his universal successor.

Acts 1982, No. 187, § 1, eff. Jan.' 1, 1983.

APPENDIX 16

SUITS AGAINST STATE
Ch. 32

§ 5111. Appropriation of property by state, parish, municipality or agencies thereof, attorney, engineering and appraisal fees; prescription

A. A court of Louisiana rendering a judgment for the plaintiff, in a proceeding brought against the state of Louisiana, a parish, or municipality or other political subdivision or an agency of any of them, for compensation for the taking of property by the defendant, other than through an expropriation proceeding, shall determine and award to the plaintiff, as a part of the costs of court, such sum as will, in the opinion of the court, compensate for reasonable attorney fees actually incurred because of such proceeding. Any settlement of such claim, not reduced to judgment, shall include such reasonable attorney, engineering, and appraisal fees as are actually incurred because of such proceeding. Actions for compensation for property taken by the state, a parish, municipality, or other political subdivision or any one of their respective agencies shall prescribe three years from the date of such taking.

B. The rights of the landowner herein fixed are in addition to any other rights he may have under the constitution of Louisiana and existing statutes, and nothing in this Part shall impair any constitutional or statutory rights belonging to any person on September 12, 1975.

Acts 1975, No. 434, § 1.

APPENDIX 17
GENERAL PROVISIONS

§ 14. Possession of property; removal of facilities; objection; waiver

In any case where the state or its political corporation or subdivision has actually, in good faith believing it had authority to do so, taken possession of privately owned immovable property of another, and constructed facilities upon, under or over such property with the consent or acquiescence of the owner of the property, such owner shall be deemed to have waived his right to contest the necessity for the taking and to receive just compensation prior to the taking, but he shall be entitled to bring an action for such compensation to be determined in accordance with the provisions of Section 9 of this Tit1e, for the taking of his property or interest therein, the just compensation to be determined as of the time of the taking of theproperty, or right or right or interest therein, and such action shall proceed as if the state, its political corporation or subdivision had f iled a petition for expropriation as provided for in Section 2.1 of this Title.

In the case where any corporation referred to in Section 2 of this Title has actually, in good faith believing it had the authority to do so, taken possession of privately owned immovable property of another and constructed facilities upon upon, under or over such property with the consent or acquiescence of the owner of the property, it will be presumed that the owner of the property has waived his right to receive just compensation prior to the taking, and he shall be entitled only to bring an action for judicial determination of whether the taking was for a public and necessary purpose and for just compensation to be determined in accordance with Section 9 hereof, as of the time of the

taking of the property, or right of interest therein, and such action shall proceed as nearly as may be as if the corporation had filed a petition for expropriation as provided for in Section 2.1 of this Title.

Added by Acts 1976, No. 504, § 1.

APPENDIX 18

JUDICIAL NOTICE

Art. 202. Judicial notice of legal matters

A. Mandatory. A court, whether requested to do so or not, shall take judicial notice of the laws of the United States, of every state, territory, and other jurisdiction of the United States, and of the ordinances enacted by any political subdivision within the court's territorial jurisdiction whenever certified copies of the ordinances have been filed with the clerk of that court.

B. Other legal matters. (1) A court shall take judicial notice of the following if a party requests it and provides the court with the information needed by it to comply with the request, and may take judicial notice without request of a party of.

(a) Proclamations of the President of the United States and the governor of this state.

(b) Rules of boards, commissions, and agencies of this state that have been duly published and promulgated in the Louisiana Register.

(c) Ordinances enacted by any political subdivision of the State of Louisiana.

(d) Rules which govern the practice and procedure in a court of the United States or of any state, territory, or other jurisdiction of the United States, and which have been published in a form which makes them readily accessible.

(e) Rules and decisions of boards, commissions, and agencies of the United States or of any state, territory, or other jurisdiction of the United States which have been duly published and promulgated and which have the effect of law within their respective jurisdictions.

(f) Law of foreign countries, international law, and maritime law.

(2) A party who requests that judicial notice be taken and the court, if notice is taken without request shall give reasonable notice during trial to all other parties.

C. Information by court. The court may inform itself of any of the foregoing legal matters in such manner as it may deem proper, and the court may call upon counsel. to aid it in obtaining such information.

D. Time of taking notice. Judicial notice of the foregoing legal matters may be taken at any stage of the proceeding, provided that- before taking judicial notice of a matter in its instructions to the jury, the court shall i nform the parties before closing arguments begin

E. Question for court. The determination of the foregoing legal matters shall be made by the court.

APPENDIX 19
Action of Nullity

2001. Grounds in general

The nullity of a final judgment may be demanded for vices of either form or substance, as provided in Articles 2002 through 2006.

Art. 2004. Annulment for vices of substance; peremption of action

A final judgment obtained by fraud or ill practices may be annulled.

An action to annul a judgment on these grounds must be brought within one year of the discovery by the plaintiff in the nullity action of the fraud or ill practices.

Axt. 2005. Annulment of judgments; effect of appe appeal therefrom, or

A judgment may be annulled prior to or pending an appeal therefrom, or after the delays for appealing have elapsed.

A judgment affirmed, reversed, amended, or otherwise rendered by an appellate courtmay be annulled only when the ground for nullity did not appear in the record of appeal or was not considered by the appellate court.

An action of nullity does not affect the right to appeal.